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THE WRONG OF THE GREAT SURPLUS.

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HAS any one a mind to boast that the income of the United States Government for the fiscal year just closed was nearly ninety million dollars more than the outgo? The preliminary figures of the Treasury are $86,929,425, which experts reckon will be raised to the larger sum by complete returns. This is surely immense, over 13 per cent. of the total revenue. The net receipts of the Government before the Civil War were at the greatest $74,056,697 in 1856, and were only $51,987,455 in 1861, or 58 per cent. of the present excess. The war of the Revolution cost the young Republic in specie $135,000,000, which sum the collections above the expenditures will exceed at present rates before the calendar shall record 1908. The second war with Great Britain involved the outlay of $102,993,153, or the equal of the current surplus for fourteen months. The cost of the Mexican War was $125,447,483, which would be covered by the excess of revenue before December next. The expenses of the war with Spain, which were $130,000,000, would be offset by the surplus of fifteen months.

We magnify the burdens which foreign armies bring on their peoples; yet the charge to Italy for its army in 1905 was $66,000,000 or 75 per cent. of the American surplus last year. France pays annually for its army $148,000,000, Great Britain

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$150,000,000, and Germany $176,000,000. These sums are spent at home for service, commissariat and arms. Our surplus may be compared with them in amount, but in no other respect, for it buys nothing and pays nobody.

Collections in excess of expenditures have become the rule in this country. Aside from 1904 when $50,000,000 was disbursed on account of the Panama Canal, a deficit has occurred in only one year since this century began, and that was $23,004,728 in 1905. The net surplus since 1900 mounts up to the enormous sum of $274,196,949, although within that period large reductions were made in internal revenue.

The end is not yet. The surplus, so large in the fiscal year just closed, continues. The growth of population keeps up and carries with it larger revenues to the Government. In June, the collections and the surplus are on the heaviest scale, showing an excess of $21,878,462, but that is always an exceptional month. In the fiscal year 1908, the receipts promise to outrun the outlay by $120,000,000. Secretary Shaw's estimate in his annual report was for a surplus of $58,000,000 in 1907; it is $32,000,000 more. In the coming months, the elasticity will not be less and will be adequate to offset any changes likely to occur. A falling off in business would be without parallel which should reduce the revenues by 13 per cent. for a year; so that the present surplus can be cancelled only by law. The excess is more likely to increase in volume and in force.

This magnitude is the phenomenon of American finance, a real monster eating into the earnings and savings of the producing millions. What excuse can be presented for such hoards? There is no public use to which they can be put. Congress has been liberal in its appropriations, to which these large collections have added. The nation neither courts nor dreads a foreign war. No debt looms up to be provided for. The national obligations bearing interest which before the Spanish war were $847,867,400 are, on the first of the present month, $894,834,280. The four-per-cents. due this month have been taken out of the way by extension into two-per-cents, and the provision for paying $36,121,450 in cash on the turn of the year. The Government has the option to pay the fragment remaining of the Spanish war loan next year, but, doubtless, the entire $63,495,000 outstanding will be required for exchange into two-per-cents. to

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serve as a basis for bank-notes. Only by that process can additional securities become available for that purpose. In 1906, Secretary Shaw sold $30,000,000 of Panama bonds to encourage the increase of bank circulation. Until the three-per-cents. are transferred into twos, that plea will not lead an overflowing Treasury to add to the interest charge by gratuitous borrowing. The long fours are too high for purchase by the department, while the creditors of the nation do not want their bonds not due to be taken up.

The rapid reductions in the public debt from 1870 to 1873 were helpful to the national credit, and gave strength to the financial situation. Such action now is neither practicable nor desirable. The effort to provide gold for specie resumption in 1879 was noble, and its success was due to generous revenue as well as to loans. The vast hoards of the precious metals now in the Government vaults are abundant for every demand, and there is even embarrassment of riches. The Treasury has become a sturdy giant engrossing the money of the citizens.

The excessive receipts congest the Treasury and breed strife on the part of the banks to get them as deposits. Public funds in national banks, which were $94,481,697 on June 30, 1906, mounted up to $182,412,808 at the close of last month, held by 1250 institutions. The smaller banks involve much labor in accounts, so a commission is proposed to frame a new plan of distribution, and it is even suggested that the beneficiaries shall be confined to the forty reserve cities or to a central recipient. Meanwhile, the Treasury held a year ago over current liabilities a balance of $76,289,224, while now its holdings are $78,585,126, proving that practically the entire surplus has gone into the banks.

Experts reckon $50,000,000 as a proper balance for current cash, and that surely is quite enough. Then the Treasury carries, itself, $28,585,000 above all needs. In Government vaults and in national banks, therefore, lies idle of public funds the monstrous sum of $211,000,000, earning no interest and serving no purpose at all. The claim is urged that public deposits in banks really go back into the channels of business. Treasury officials are high-priced messengers to transfer the people's cash to the banks. Those who pay can better deposit to their own credit, subject to draft at their own pleasure.

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At a bankers' State convention, two or three weeks ago, a general panic was predicted unless the revenues, as a whole, should be paid directly to the banks instead of passing through the Treasury as now. The argument is that business cannot afford to have its life-blood drawn away. Far more obvious is it that the people should keep their own money, and the Government extort the least possible amount. In that course is the surest guarantee of safety, the chief bulwark of protection. Probably, disaster, whenever it shall come, will be local and transient, and in single classes, not covering the continent or all consumption and commerce. The ninety or a hundred million dollars a year kept busy by the citizens will bear richer and better fruit than if piled up in banks or Treasury.

No financier, no statesman, would include in a scientific system such a drain from the community without definite object. With prudence and foresight, generous, even lavish, appropriations have been voted; rivers and harbors are improved; public buildings are erected in many cities; far-reaching schemes of irrigation are carried forward; the Isthmian Canal enlists attention; the payment to us of the large indemnity from China is waived; the munificence of the Government has hardly a limit. Is it not high time to heed the concerns of the individual citizen, and let him keep as much as may be of his wages and property?

The defence may be that no such surplus was intended, and that the revenues have gone far beyond calculation. Grant whatever force the plea deserves, and admit that committees and Congress and officials are bound to lean to the side of prudence. The facts are the indictment, and caution may run into folly. The excess of receipts above outgo has been constant, has asserted itself every month, has climbed before the eyes of men as the sun rises from the horizon to the zenith. The question why the surplus has been suffered to attain such huge proportions may pass without answer, as if "it happened so." The pressing inquiry is, Shall it go on into more scores of millions, and what shall be done about it?

In 1836, the revenues outran the expenditures, and Congress, unwilling to enter on broad public improvements, voted to distribute the surplus above $5,000,000 between the States as a loan. The return was to be in four instalments. Three were

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paid, but the fourth, under order of Congress, was never collected, but stands against the twenty-six debtor States on the Treasurer's books as unavailable funds, $28,101,644. When at later periods collections were in excess of needs, bonds could be bought and the national debt reduced. Now financiers can devise no plan other than to turn the money into the banks, while the proposal to charge interest falls to the ground. The boldest would hardly dare to advocate in words that the Government should collect revenue for the people just to deposit in the banks. The practice seems to daze no one, but all accept it as commonplace finance.

The national Treasury should not be left bare, nor be placed where it should be forced, as in 1893, to borrow at exorbitant rates to maintain the public credit. An ideal system would show always a small balance above current liabilities. Provision may wisely be made against contingent claims and possible perils. It was fortunate that in 1898 funds were at once available to prepare for war, yet bonds were quickly sold for additional resources. In case the Panama Canal is to be built without further loans, that yearly outlay is to be reckoned, as it is in fact included—$27,196,672—in the expenditures for the twelve months just ended. Other public works and the expenses of the modern navy are not to be omitted. But the limits beyond which it is hardly less than criminal to extort collections from industry and thrift, are plain as our grand mountain ranges.

The country is in distress from lack of capital. Provision must soon be made as usual for moving crops, and stringency is always created at that season. Should the Government, in careless greed, drain the resources on which farmer and trader depend to carry food from the harvest-field to market? The superfluous dollar collected for the Treasury taxes grievously the staff of life. Investors do not now buy bonds of the sort for which they were eager a while ago. A leading banking-house states that, since the first of January last, railroad securities to the amount of $1,100,000,000 have been authorized. Other corporations are borrowers or seek to increase their capital. Municipalities feel the monetary pressure; even New York City fails to sell more than $2,500,000 of $29,000,000 bonds offered to investors who hold off for higher interest. The State

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of New York has to remit the tax on its bonds for the barge canal to tempt banks to buy them. The National Government, in its overflowing wealth, saps the resources of the country with jaunty nonchalance, and draws a hundred million dollars a year above its needs, thus crippling the machinery of enterprise and development. In the hands of the people, this money can be set to work, can earn dividends, can multiply itself. The year's surplus is an immense capital even in these days of prodigious operations. Why divert it from the channels where it might irrigate the dry and thirsty land?

No theory of revenue is involved in this matter. The champion of a tariff for revenue only cannot excuse collections beyond current needs. The free-trader must denounce as iniquitous imposts not imperatively required. The protectionist must regard excessive revenues as hostile to his policy. He who deems that the best government is that which governs least must favor the lightest burdens. The man who believes in a liberal paternalism must consider the citizen and oppose waste and extortion. The scientific economist aims at an equilibrium between income and expenses, so far as the fluctuations of business will permit.

In no other nation is such a condition as prevails here conceivable. The current expenditures elsewhere are all that can be borne and public debts roll up. Only the prosperity with which Americans have so long been blessed renders it endurable here. Taxes, however necessary, are a handicap to production and trade. They may make the difference between profit and loss, and reduction in them may serve as a premium to enterprise or as encouragement when clouds arise and as a help over hard places. A useless surplus may become dangerous as well as offensive. The citizen who gladly pays all that the Government really needs, will resent extortionate charges. Sooner or later, he will scrutinize the imposts and draw the line between what is just and what is unjust. He is easily content, but he can be roused to protest and anger.

The idle funds now in vault and bank are nearly or quite twice the cost of any war with a foreign nation in which the United States has ever been engaged. Nerves must be excitable indeed which desire any increase even for a war-chest for emergency. Yet search here and there is made for kinds of taxes not now on the national schedules. If more revenue were needed,

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that might be a task worthy of a statesman. Or for academic diversion, the question of substituting an income tax or imposts on inherited estates for customs duties and charges on liquors and tobacco, may deserve discussion. Just now, however, much more gracious is the privilege to devise methods for leaving their capital to fructify in the pockets of the people.

The credit or the blame for the enormous surplus belongs to Congress, not to the Executive Departments, although the Treasury might win honor by exposing the grievance. The House of Representatives originates revenue laws, and adjusts the receipts to the expenditures. Business conditions affect the income, and it is the part of legislators to calculate the proceeds of customs and internal taxes. These, as a rule, always advance unless the statutes are changed. Recessions are temporary and are soon overcome. A proposal to raise the expenditures to the level of the present receipts, just to get rid of the balance, would be little less than treason. Yet the natural tendency is strong to spend what is within reach. More and more it is felt that excessive Government collections enter into the cost of living, lift prices, bear down on every industry, and are a monument of spoil and ravin.

The majority in Congress is accountable for the wrong of the great surplus. The party in control is commended for maintaining the national credit, and it is chargeable for the burdens placed on the great constituency. The weight of those burdens is of more moment than how they shall be carried. The wise legislator will seek to lighten them. Years have been many when the problem was how to raise money enough to support the Government. That time is past. Now the duty is to check the flood which drowns the Treasury. The pessimist will give warning that by general disaster the revenues may be greatly reduced. Surely, the idle funds now hoarded will be adequate to meet any such emergency for a long period. Meanwhile, one aid to prevent mishap will be to let the producer keep his money for use and draw from him for revenue as little as possible.

The Opposition in Congress is more than a body on parade; it is a partner in legislation. Is its duty not to bind the majority to its obligations, to hold down taxes, to compel the enactment of wise laws? Debate over theories is well enough.

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Criticism of appropriations outside of one's own district or State is all right. But why let the collectors levy on all the country a hundred million dollars a year as useless to the nation as the extortions of the robbers of the Rhine or of Turkish pashas? The guilt in last analysis falls on Congress, both on majority and opposition.

The surplus is gathered from every shop and house. For the fiscal year just closed, it mulcted each person of the population as it began $1.04, and each family of four $4.16. These families could use these dollars on their own account as active capital, to turn a wheel, or pay for food or raiment or education.

Who is there who will stand up before his neighbors and declare that this huge surplus should be allowed to grow for a single month after Congress can act to stop it? The agreement seems to be general that the tariff is not to be revised until after the Presidential election, or a year and a half hence. This crying abuse of wasteful millions can be throttled without waiting for discussion and strife over schedules. The direct way is to cut it off.

Can it be denied that the excess of national revenues is monstrous in amount? No employment is found for it, nor can the piling up of deposits in national banks be defended as a permanent practice, the creation of a stagnant pool never to flow out. The increase of the present hoards is aggravating the evil. No excuse for such a surplus can be discerned in any signs or dangers in the future. The Government does not want the money, while the people do want it badly, for State, corporate, municipal and private purposes. Congress cannot too soon provide for an adjustment between income and outgo.

This can be done by any one of several methods. The simplest and most direct way is by a flat reduction on all present rates of revenue. Controversy that will cause delay must be postponed. Agree on the abolition of the surplus as the first thing to do. Accept the mandate of common sense to collect what is needed and no more. The timid may counsel holding on to a part of the excess. The wiser course will be to wipe it all out, for it will begin to grow again long before the existing hoards can be spent.

The suggestion is natural, to extend the free list by a score of millions or more. If a majority can be rallied for such a

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measure, very well; but is that possible? Not a few will insist that tobacco, beer and spirits can easily afford to pay the tax now levied, and that the internal revenue should stand without change. Then objection will be urged that the customs duties should not alone bear the whole reduction, which would take off 37 per cent. from the schedules as they stand. Such diversities force practical legislation back to the plain plan of a uniform discount from all the present charges to an amount equal to the surplus of 1907.

That would be 13 per cent. on the total revenue. Such modification on the tariff and internal revenue combined could not be styled drastic or harmful, while the reduction, if cast on customs schedules alone, would be more radical than has been advocated by revisionists or champions of tariff reform. Under the general discount, the principle of protection would not be challenged.

Is there keen enough sense of the grievance to lead all sides to waive their extreme claims in order to bring relief? It might be desirable to extend the free list or to reduce some schedules more than others. Those who know the methods of Congress cannot expect that either of such schemes can command a majority in House or Senate, or, if at all, only after long contention. Persistence on those lines can only prevent any action. Commission or inquiry can make no clearer the grievous wrong of the surplus. Any theory which serves as buttress for that ought for the time to be set aside. After the yearly balance is brought to a normal, healthful sum, policies and rates, free list and schedules can command the stage.

Two years will elapse before any project of systematic revenue revision can become operative in the natural movement of legislation. Congress must decide whether, for all that period, the monstrous surplus shall draw blood from every vein of production, of consumption and of commerce. Constituents are patient, but, even when thriving and fat, they may kick, like Jeshurun. But higher motives than popular favor are in the scale. What ethical standard justifies the drain on the citizen? No financial defence can be set forth. The pretence is not advanced that the excessive collections are a fine or penalty on the community; for the citizens as a body cannot be subject to indictments. The receipts of the Treasury are pure revenue, and be-

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yond the wants of the Government are tainted by exaction and rapacity.

A Tocqueville or a Holst or a Bryce who should inquire into our national finances would wonder at the continuous gathering of such a huge surplus. He might not be surprised at an excess of revenue for one or two years. He would marvel that it should be kept up until the hoards climb above $210,000,000. He would ask what apology the masters of finance can plead for such a congestion. He would regard the patience of the people who pay as proof of their wealth and patriotism, their faith in the rulers, and, doubtless, as neglect of their personal interests. That, too, will be the verdict of history, for time and distance create the same perspective. Do Americans refer to aliens or the future the decision of a vital matter of current finance? Taxation falls on their backs; collections are extorted from their pockets. They can judge fairly whether they cannot, better than any officials, manage funds which the Government has no use for. Are they so very rich that $100,000,000 a year is a trifle about which they do not trouble? They cannot be so foolish as not to know that so much capital can be put to more productive employment than to be locked in the cerements of the vaults of the Government or the banks. Possibly, like Gallio, they care for none of these things. The "Almighty Dollar," even counted by scores of millions, may not be worth picking up by them. Yet, in the long run, the American people are ruled by common sense and fair play. Congress will be wise to go forward and not tarry for popular clamor to compel the easing of burdens. Parties cannot hide the exigency. No mystery clouds the demand. The electors pay with alacrity what the Government actually needs; the rest of their resources belongs in their own control. They approve of liberal revenues, while they condemn an exorbitant surplus.

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THE NEW IMMIGRATION ACT.

BY ROBERT DeC. WARD.

On July 1st, 1907, the new Immigration Act of February 20th, 1907, went into effect. As this law is to represent, for the present at least, our policy with regard to the admission of aliens to the United States, it is well to see clearly at this time what changes the new Act has made in previous legislation, and what the probable effects will be. The Immigration Act of February 20th, 1907, was the result of a compromise reached by the Conference Committee of the Senate and the House, to which body the two Immigration Bills passed by the Senate on May 23rd, and by the House on June 25th, 1906, were referred. In a previous number of this Review* the writer discussed the more important provisions of the bills which were sent to the Conferees.

Section I of the new Act raises the head-money from $2 to $4. This slight increase will not operate to "restrict" immigration. It should mean a somewhat larger "immigrant fund"; better care and protection of the aliens themselves; larger and more adequate accommodations at existing immigrant stations; the building of new stations, and a larger inspection force, so that the officials shall not be overworked, as they now are. The comfort and health of our immigrant inspectors demand an immediate increase in the force. This head-money, it is to be remembered, is paid by the steamship companies, the alien himself knowing nothing of the payment. The steamship companies do not need to raise their passage-rates because of the higher head-money, seeing that the profit in carrying a single steerage passenger across the ocean is already very large. If the rates are raised, as they have been by some steamship lines, the increase will be a slight advantage to the United States, in that it will help a little to remove this country from the unenviable position

* Dec. 7, 1906, pp. 1120–1133.

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which it now occupies of being about the cheapest place for Europeans to emigrate to. A "cheap excursion" does not usually attract the most desirable passengers. The head-tax is not levied on immigrants to Guam, Porto Rico and Hawaii; but if such persons not citizens of the United States come later to the United States the head-money must be paid. Aliens who have resided for one year uninterruptedly in Canada, Newfoundland, Cuba and Mexico do not pay the tax. The Act contains the provision that if the income from the head-money is more than $2,500,000 in any year, the excess shall not be added to the "immigrant fund."

Section I also provides that, "whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States, or to any insular possession of the United States, or to the Canal Zone, are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone." This is the so-called "San Francisco Compromise," which was inserted in the Immigration Bill in order that the Japanese question, then very acute, might be settled promptly, and to the satisfaction of the San Francisco authorities. Under this provision the President has the power to exclude Japanese laborers. The "San Francisco Compromise" will doubtless have to be changed before long, but in the mean time it serves its purpose.

Section II of the new Act is good in that it adds to the excluded classes imbeciles, feeble-minded persons, epileptics and tuberculous aliens. Many aliens have in the past been certified as being "mentally deficient" or "feeble-minded," and have not been debarred because they were not actually idiots. No distinction should be made between the idiotic and the feeble-minded. The latter are as undesirable additions to our population as the former; they propagate a great deal of feeble-mindedness in their offspring, and in many cases they subsequently become insane. The National Conference on Immigration, held in New York in December, 1905, unanimously recommended the exclusion of the feeble-minded, and the exclusion of aliens afflicted with tuber-

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culosis is in line with the best modern medical opinion regarding the infectiousness of that disease.

The new act is good in that it excludes persons who are "mentally or physically defective, such mental or physical defect being of a nature which may affect the ability . . . to earn a living." The physique of our immigrants is known to be deteriorating. Persons of poor physique are especially susceptible to tuberculosis and other diseases resulting from crowding in unsanitary dwellings. The rigid exclusion of this class would supplement the exclusion of persons "liable to become public charges," many of the latter now being admitted on oral promises of friends or relatives to care for them, which promises are of no value and are largely disregarded. The best preventive of race decadence is the selection of good, strong, healthy stock. The best test for arriving aliens is a physical test.

The new Act is weak in that this excellent "poor physique" clause is largely nullified by giving the Secretary of Commerce and Labor authority to admit physically defective aliens under bonds (except in case of tuberculosis or loathsome and dangerous contagious diseases). All past experience goes to show that such bonds are useless. All common sense goes to show that a physically defective and degenerate alien is undesirable, whether he be a public charge or not. Better to have 100,000 aliens spending all their lives in American almshouses, insane asylums or prisons than to have 500 physically weak, defective and degenerate aliens spending their lives in sweat-shops or factories, and reproducing their kind, to hand down these qualities of degeneracy and of poor physique to succeeding generations. We might establish a physical standard for admission to this country like that of the United States army or navy. That would be too high. We might require every alien to have a physique sufficiently rugged to enable him to work at hard manual labor, whether he be a clerk or a painter or a farm-hand. That, also, might be too severe. The very least we can do is to establish a physical standard such that any one so weak, degenerate or defective as to have his ability to support himself thereby interfered with should be excluded. This does not mean that such "poor physique" cases are to be debarred because they are "liable to become public charges." Such are already debarred by law. But it sets a physical standard at the point of ability to support oneself. This is wise, rea-

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sonable, necessary. It is the lowest physical standard of any value whatever which it is possible to establish. Exceptions might be made in favor of the immediate relatives of admissible aliens or of responsible persons already in the United States. But beyond that the medical certificate of poor physique should debar as it does in the case of a loathsome disease. There should be no appeal, and no admittance under bonds.

The section which gives the Secretary of Commerce and Labor authority to admit physically defective aliens on bonds, gives the same authority in "liable to become public charge" cases. This latter is not a new provision, but it would have strengthened the Act very much had the amount of the bond been fixed by law at so large a figure that the instrument would really be effective.

The Act is good in excluding children under sixteen years of age unaccompanied by one or both of their parents. The Secretary of Commerce and Labor is again allowed to use discretion in this matter, and may prescribe any regulations which he sees fit. The object of this provision is to prevent the importation of boys to work under the padrone system and of girls brought for immoral purposes.

The new Act strengthens the contract labor provisions in certain important respects.

The old law imposed a fine of $100 upon steamship lines bringing diseased immigrants, if the disease could have been detected at the port of departure. The new Act is good in that it also imposes fines for bringing idiots, imbeciles, epileptics and tuberculous aliens. While the new law does not increase the payment, the extension of the fine system to these other classes may bring up the total of fines to a point where the companies will be obliged to refuse to take the immigrants objected to. The Immigration Conference at New York in 1905 recommended the imposition of a fine of $100 on steamship companies for every alien rejected by our inspectors for any cause, and the Commissioner-General of Immigration has recommended a fine of $500 for bringing diseased aliens. It will be seen that the new law is less radical than either of these suggestions. It is perfectly reasonable that the steamship companies should be fined for not exercising proper care in the selection of the aliens who are allowed to embark for the United States. As President Roosevelt well said in one of his messages to Congress:

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"The most serious obstacle we have to encounter in the effort to secure a proper regulation of the immigration to these shores arises from the determined opposition of foreign steamship lines, who have no interest whatever in the matter save to increase the returns on their capital by carrying masses of immigrants hither in the steerage quarters of their ships."

That is the key-note of the whole situation. If we fine the steamship lines for each immigrant whom we reject, for certain causes distinctly defined in our present laws, we shall go far toward forcing these companies, to whom we owe no favors of any sort whatever, to refuse thousands of undesirable or doubtful aliens, who will therefore never leave their homes. One of the most significant statements in Vol. XXX, of Special Consular Reports, "Emigration to the United States," is the following, from an American consul in Europe:

"It is difficult for a consular officer, necessarily cognizant of some emigration anomalies, to express, without some measure of bluntness, his opinion of the lack of practical regulations in the United States to exclude undesirable immigrants. That the present system, or lack of system, is the wonder of every European critic is not too strong a statement. . . . The whole system, at present existing, is arranged for the accommodation of the ship-owners."

This recalls to mind the statement made by General Shattuc, member of Congress from Ohio, when the Immigration Act of March 3rd, 1903, was under discussion in the Senate Committee on Immigration. General Shattuc was chairman of the House Committee on Immigration, and was present at a hearing before the Senate Committee. The question came up regarding certain suggestions which were to be made by Mr. A. S. Anderson, passenger manager of the American Line. The comment made by Representative Shattuc was: "He [Mr. Anderson] wrote most of the bill. He ought to be satisfied with it." This was said by the chairman of the House Committee on Immigration regarding a prominent steamship official. Any one who is interested will find these words on page 29 of the Senate Report No. 2,119, in the first session of the Fifty-seventh Congress.

The new Act is good in providing for more complete manifests, and for statistics of aliens emigrating from the United States. We have hitherto had no accurate statistics of persons who, having come to this country, later return, usually on short visits, to their

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old homes across the water. These new data will throw light on this interesting phase of the alien passenger movement.

The new Act is good in providing a uniform period of three years (instead of two, as at present) within which both those who enter the United States in violation of law and those who become public charges from causes existing prior to landing may be deported. It also provides that the transportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the steamship company. If this is not practicable, the expense is charged to the immigration fund. Under the new Act, it will be both easier and more humane than at present to deport insane aliens, sending them back to their nearest relatives at home.

The new Act creates a Commission, composed of three Senators, three Representatives and three persons appointed by the President, to investigate the whole subject of immigration and report and make recommendations to Congress. It is not likely that this proposed investigation will bring to light many new facts. The subject has already been thoroughly studied, carefully considered and exhaustively argued. The demand for an investigating Commission has come almost exclusively from those who are selfishly interested in having conditions continue as they are at present, and from those who are hostile to any restrictive or selective legislation whatever. The new Commission will probably not report until after the next Presidential election. Moreover, its recommendations, when made, are as likely to be unheeded by Congress as to be embodied into legislation. The fate of the Industrial Commission's Report on Immigration does not hold out much hope of a ready concurrence by Congress in the recommendations of this new Commission.

The new Act authorizes the President to call an international conference on immigration, a provision which is not likely to lead to any very definite results of practical value. It provides for the establishment of an examination of aliens abroad before they embark, if foreign governments do not object to such an arrangement, as some of them certainly will. It gives authority to the Commissioner-General of Immigration to establish a division of information to promote the beneficial distribution of aliens among the localities desiring immigration. Distribution of immigration has been urged by many persons as a solution of some of the

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present evils of overcrowding. In so far as the proposed provision can effect the scattering of aliens where their labor is desired, it should prove a valuable adjunct to the immigration laws, and it is certainly worth trying. But it is to be remembered that "spreading the slum" does not improve the quality of the incoming aliens; that distribution is a palliative, not a cure, and tends rather to increase than to diminish the number of new arrivals.

The new Act provides for increased air space for each immigrant on board steamships. This is an improvement which has long seemed necessary. The provisions embodied in the new law will not, however, necessitate any changes in the newer ships, and will not even appreciably reduce the number of steerage passengers.

The foregoing are the more important changes which the new Act makes in our immigration laws, no reference being here made to Chinese immigration. It contains nothing revolutionary or radically restrictive. It makes somewhat more effective the principles of selection which were contemplated in the original Acts of 1882 and 1891. One of its strongest points is the addition of aliens of poor physique, when the ability to earn a living is affected, to the excluded classes. One of the weakest points is the provision that such aliens may be admitted under bonds. Taken as a whole, the Act of February 20th, 1907, is not one which can give any cause for enthusiastic satisfaction to those who believe that neither the foreign steamship companies nor even the immigrants themselves are the most competent and unbiased judges as to the qualifications—physical, mental and moral—which make more or less fit for American citizenship, and for bringing into the world future American citizens, the alien peoples who come to our shores. It is true that more effective selection is possible than under the old Act if the law is properly enforced, but a lax enforcement can make even the new law of little avail in debarring any but the most obviously diseased, decrepit, feeble-minded and generally unfit aliens.

ROBERT DEC. WARD.

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THE NATIONAL GALLERY OF ART.

BY LEILA MECHLIN.

ONLY a little over a year ago announcement was made that America had a National Gallery of Art; one which for more than half a century had legally existed, but had been overlooked and forgotten. Once brought to light through the agency of the Harriet Lane Johnston bequest, this institution has demonstrated splendid vigor and developed with a rapidity as encouraging as it is surprising.

When the Smithsonian Institution was established, by act of Congress, in 1846, it was made the lawful custodian of all works of art belonging to the nation, and steps were taken, by the regents, to procure and maintain a gallery. Various conferences were held upon the subject; plans for special exhibitions and for a school were considered; and, in 1849, with excellent judgment, the sum of four thousand dollars was expended for the purchase of the Marsh collection of prints. But that is about as far as the matter was carried.

The first equestrian statue erected in this country—that of General Jackson in Lafayette Square in the city of Washington—was not completed until 1853, and the sculptor—Clark Mills—had never seen an equestrian statue when he produced it. There were no notable collections of works of art, either public or private, available to the student; and the early painters of eminence had passed away, leaving but a scattered few to carry on the traditions. The astute collector might, at that time, have procured great art treasures in Europe, which would have incalculably enriched the nation and benefited future generations; but the astute collector was wanting, and the few purchases which were made for the National Gallery by the Smithsonian Institution were expressive chiefly of crude patriotism—pictures

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which had subjective interest as records of historical personages or events, but little or no intrinsic art value. Very naturally, the interest waned, and between the years 1866 and 1879 all those things which had come into the possession of the Institution were deposited either in the Library of Congress, or in the Corcoran Gallery of Art, then lately established.

It was not strange, therefore, that when Mrs. Harriet Lane Johnston made her will, disposing of her collection of paintings, historical documents and so forth, she was in ignorance of the existence of a National Gallery, and so bequeathed them to the Corcoran Gallery, with the provision that, if such an institution should at any time be established by the United States, they should revert to it. Owing to certain other conditions with which it was impossible to comply, the Corcoran Gallery was obliged to decline the bequest.

It was this emergency which led President Roosevelt to include in his annual message to Congress, in December, 1904, the recommendation that "the collections of art contemplated in Section 5,586 of the Revised Statutes should be designated and established as a national gallery of art, and the Smithsonian Institution should be authorized to accept any additions to said collections that may be received by gift, bequest or devise"; and it was this, also, which opened the way to the discovery of the mislaid institution.

Mrs. Johnston's heirs were as averse to the dispersal of her collection as was the nation, but they had no legal right to interpret her will. Hence an amicable suit was entered in the Supreme Court of the District of Columbia, and the quandary was settled on July 11th, 1906, by a decree which not only authorized the Smithsonian Institution to receive the gift, but gave legal standing to a National Gallery. In less than a month, the works of art, etc., composing the Harriet Lane Johnston collection were given into the custody of the Smithsonian Institution and temporarily placed on exhibition in the rooms set aside for the Secretary and regents.

Mrs. Johnston died in July, 1903; and, while the settlement of her estate was pending, Mr. Charles L. Freer, of Detroit, Michigan, made his splendid gift to the nation, placing in the hands of the regents of the Smithsonian Institution, on May 6th, 1906, a deed to his private collection of paintings, prints,

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potteries and other art objects, valued at $600,000, and promising to bequeath to the Institution the sum of $500,000 for the construction of a fire-proof building in which to house it. This had no reference to a National Gallery, but it is probable, if not certain, that the discussions occasioned by Mr. Freer's original offer operated toward an awakening of interest on the part of those in authority and helped materially to quicken the solicitations of those outside. And in the end, though the Freer collection will be in a separate building, a unit in itself, it will not be isolated to such an extent that it may not be considered a part of the National Gallery. It was, in fact, the beginning; the first stride toward a distant goal. That Mr. Freer recognized the desirability of centralizing, at Washington, the forces which make for national culture is significant.

The American people are inherently generous. The majority of our public institutions are supported by private individuals, and even our Government collections have been built up by numerous small private gifts. No sooner, indeed, was it known that a National Gallery existed than offers were made of loans and gifts. But the first question to be met was that of adequate accommodations—a suitable gallery in which to house and place on exhibition the newly acquired works. Every available foot of space in both the Smithsonian and National Museum buildings was occupied, the cellars were full, the storehouses were overflowing, and the new building, with its nine and a half acres of floor space for the accommodation of exhibits, was far from completed. The Smithsonian Hall might well have answered, could it have been remodelled and made available, but there was no place in which to dispose its exhibits, and hence the lecture-hall of the National Museum was selected. This is a large and dignified room, and, under the expert direction of Mr. William H. Holmes, chief of the Bureau of American Ethnology, who has acted as curator of the National Gallery, it was redecorated and adapted to gallery use. To be sure, it is poorly lit and in other respects far from ideal; but it alone was available, and its prompt utilization manifested on the part of the officers of the Smithsonian Institution a fixed determination not to allow the National Gallery project again to lapse.

Almost immediately after the Harriet Lane Johnston collection was arranged in this hall, the heirs of the late Lucius Tuckerman

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offered to loan to the gallery, for not less than a year, the collection of paintings which he had assembled; and, shortly after this, Mr. Edward Kemeys, the distinguished animal sculptor, who died only last May, placed indefinitely at the disposal of the National Gallery, for exhibition purposes, a collection of his bronzes and original plaster casts, numbering more than fifty.

The Harriet Lane Johnston collection comprises sixteen paintings and as many other items, some of which have no special bearing upon the subject of art; such, for instance, as an autograph letter of Queen Victoria addressed to Mrs. Johnston's uncle, President Buchanan, during his term of office. The paintings are chiefly portraits. There is a likeness of "Miss Kirkpatrick," by Romney; one of "Mrs. Abington," by Hoppner; and one of "Mrs. Hammond," by Sir Joshua Reynolds. Sir Thomas Lawrence is represented by a painting of Lady Essex as "Juliet," and Sir William Beechy by a moderate-sized portrait of "Miss Murray." There is reason to believe that all are authentic, but none save the Romney is a specially important example. Aside from authorship, however, much interest attaches to a portrait of "Josepha Boegart," attributed to Pourbus, the younger, and to a painting of a "Madonna and Child," ascribed to Bernardine Luini. And, despite some blunt errors, a three-quarter-length portrait of King Edward VII, painted by Sir John Watson Gordon when, as Prince of Wales, His Majesty visited the United States, is one of the notable items in the catalogue. With, I think, but two exceptions—"A Street in India," by Edwin Lord Weeks, and "The Prince of Wales's visit to Mount Vernon," by Thomas R. Rossiter,—all the paintings in this collection are by foreign artists, so that, as a whole, it emphasizes especially the desirability of collecting this class of work; of bringing to America, and congregating in a national collection, the great works of the leading masters of all lands and times as examples and standards.

The Tuckerman loan collection was of the same type, covering merely a later period and indicating the trend of European art when, for a number of years, it usurped the rôle of the writer and devoted itself to narration, carrying at the same time the painter's craftsmanship to remarkable perfection.

It was, therefore, all the more interesting and important that the next addition to the National Gallery should have been the Kemeys collection, which turned the attention abruptly to Ameri-

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can production and a diverse form of expression. Howsoever Mr. Kemeys's work may be regarded from the strict art standpoint, its strong, frank merit can never be denied, and for all time it must be reckoned among notable accomplishments. It breathes the spirit of genuine Americanism; it presents the wild life of the plains and reechoes the legend of the wilderness. While others were seeking classical ideals in the Old World, he was learning the secrets of the New, and with the true sculptor's instinct for plastic form was sympathetically interpreting the fauna of our land. When, a few years ago, an exhibition of American water-colors was held in London, an English critic declared, with evident disappointment, that none, save an Indian picture by Irving Couse, manifested "a truly American characteristic." Needless to say, this is not the kind of Americanism to which I make reference. We have pictures of Indians and cowboys galore, paintings of negroes and sky-scrapers in abundance, but we have few sincere interpretations of every-day themes which set forth the ideals, the potentialities and the hopes of our own great nation. For this reason Mr. Kemeys's work is the more significant, and the loan of so comprehensive a collection of it to the National Gallery so soon after its inception must be regarded as a felicitous circumstance.

But a great impetus was given to the new institution through another notable gift. In March, of the present year, Mr. William T. Evans, of New York, than whom none has done more to advance and encourage American art, went to Washington and offered to present to the National Gallery a collection of paintings by American artists of established reputation—an offer which was promptly and gratefully accepted. This collection consisted of fifty pictures, and was given with the understanding that if, later on, it was found that any of the number failed to uphold a properly high standard it should be replaced by a better example, in order that not only the collection itself but the representation should be as good as possible. Nothing, it would seem, could be more fair-minded or generous, and certainly no small collection could better stand for contemporary American painting. It is not faultless or complete, but it is a nucleus, and such an one as, in all probability, could have been acquired by the nation in no other way. There are, for instance, included in this collection, paintings by Inness, Wyant and Homer

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Martin, which are now almost unobtainable, to say nothing of works by John LaFarge, Winslow Homer, Robert Blum and John H. Twachtman. Both the landscape and figure painters are represented, but the former with greater strength and comprehensiveness than the latter. Benjamin Constant said that Inness was the greatest landscape painter of his day; and, whether the statement may be taken at its face value or not, it is undoubtedly true that he and his contemporaries led the way to the noblest conception of landscape art that the world has ever known. Where, indeed, can we turn for truer or more sympathetic interpretations of the outdoor world than to the works of our modern American painters? They have not all seen it in the same way, nor interpreted it in the same manner; some are not poets or even good painters, but the majority of them are sincere and have independent conviction.

In the Evans National Gallery collection, which for lack of available space has been temporarily loaned to the Corcoran Gallery, there are landscapes by D. W. Tryon, J. Francis Murphy, Charles B. Davis, Henry Ranger, Charles Melville Dewey, Louis Paul Dessar, Ballard Williams and Albert Blakelock, J. Alden Weir and Robert Minor, as well as by the older men already mentioned. And, of the figure painters included in the catalogue, there are John W. Alexander, T. W. Dewing, John LaFarge, Walter Shirlaw, Louis Loeb, Sargeant Kendall, Charles C. Curran, J. Alden Weir and William T. Smedley—some of the strongest and best. From first to last, the collection has been well assembled and with a view to set forth not merely notable examples, but the work of those who have contributed something individually to the art of our land.

It has been said that we have no American school of art, but if this be so it is because we have many. In America art is passing through a formative period, and is to some extent experimental and immature; but, in spite of this, it is to-day the healthiest, most vigorous and promising art in the world. There are dangers and hindrances attending its development; feebleness in some of its members; occasional dissensions within; but the trend is onward and upward, the major tendencies being hopeful. Not merely patriotism, but common sense, therefore, dictates its encouragement, and applauds its inclusion in the permanent collection of the National Gallery. It was this belief which prompted Mr.

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Evans's gift and has since induced others to make similar single contributions.

Thus it will be seen that, within a year, much has been done toward placing a National Gallery on a sure footing, but done, it will be noted, by private individuals. At no time, and in no definite way, has the Federal Government given official recognition to American art. Perhaps, in fact, I should say, to art, without qualification, for while appropriations have been made by Congress, from time to time, for the purchase of some single specific work, nothing is done toward the support of institutions, and rarely is encouragement lent by the employment of expert skill. The nearest approach to a token of any patronage of art given by the Government are the mural decorations in the Library of Congress, which were paid for out of a surplus appropriation at the minimum rate, but have, it must be confessed, exerted a potent and wide-spread influence.

America has a tremendous problem on her hands—that of social adjustment—and in no way can she solve it save through the medium of education. Until men and women learn to find pleasure in better things than mere money-getting, there will be no solution of labor troubles. Art which delights the eye and gratifies the senses is, therefore, not a luxury, but a necessity—a staff of every-day life. The public schools, through their art courses, are now doing much toward broadening visions, opening the children's eyes to that which is beautiful, cultivating their taste and giving them true standards. The museums also are reaching out in the same direction; and for the extension of art knowledge many organizations have been formed in all parts of the country. Not only, then, are the artists worthy of support, but the people are prepared to profit by the instruction which may be offered.

Governmental wheels turn slowly, but sometimes it is well that this is the case. Certainly, much care and thought must be given to the development of a National Art collection if it be made in every respect worthy. Together with the generous giver come those who have wares to sell, and discrimination must accompany the exercise of the purchase power. That this power may be unpolitical is demonstrated by the Library of Congress, which is now an independent institution and truly national in scope. Eighty years were required to evolve it, but

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it is now one of the strongest factors in the nation's educational scheme, and its organization and administration illustrate the manner in which a National Gallery might be controlled and made effectual.

When the establishment of a National Gallery was first noised abroad, suggestions were made in many quarters concerning its probable character. Some persons thought that it should be restricted to American work, others that it should be exclusively a portrait gallery. The hope is, of course, that it may in time be all-inclusive, and embrace not only one, but every phase of the art of this and other lands. The suggestion that it should be a portrait gallery forming a pictorial directory of the great men of America strikes terror, however, to those interested in the success of the project who are acquainted with the official portrait galleries which are now included in every Government Department. Every Cabinet officer is represented in his Department by a portrait, painted by any artist whom his successor may select, and paid for by the nation. Some of these portraits, by chance, are good, and could fittingly be included in a National Art collection, but many are far from commendable or suitable for the purpose.

It has been said that the National Gallery would have to contend with the jealousies of other art institutions; but I believe that this supposition is incorrect and that, almost without exception, it will be found that the people in all sections are working for the common good. Certainly, when Mr. Evans's gift was announced, congratulations poured in not from individuals alone, but from sister institutions. The conviction that Washington should be the centre of national culture and learning is gaining ascendency. Much enthusiasm has been manifested in regard to the Park Commissioner's plans for the artistic development of the city, and more and more, as time passes, is evidence given of interest in their fulfilment. The Carnegie Institution, the American Institution of Architects and the American Academy at Rome, all have their headquarters there; and, with the Library of Congress, and the scientific bureaus of the Government, they are attracting to the National Capital students and scholars from all parts of the world. And, what is more, Washington is a residential rather than a commercial city; its environment is already artistic and its future character assured.

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In the Corcoran Gallery, last winter, a notable exhibition of contemporary American paintings was held—the best probably which has yet been set forth—and during the four weeks it was open it was visited by over sixty-two thousand persons. The average attendance at the Corcoran Gallery has been about four hundred thousand a year; but, upon special occasions, as many as five thousand have been admitted in an afternoon. This at least suggests the fallowness of the field.

"Why," it has been asked, "with the Corcoran Gallery, is there need for a National Gallery?" Because, the answer is, the Corcoran Gallery is a privately endowed institution, with an independent organization and comparatively limited means. Established and endowed by the late William Wilson Corcoran, it is governed by a board of trustees whose term of office is for life and who are obliged to perpetuate, by elections, their own number. The Corcoran Gallery has, however, stood in the place of a National Gallery for many years, and if eventually, by some arrangement, it can be made a part of the larger organization, keeping its own independence, it will indeed be well.

That is, of course, looking far ahead. For the present, no radical or definite plans have been made. That other broad-minded art patrons and collectors will follow, in time, the example of both Mr. Freer and Mr. Evans seems more than probable, and that artists themselves will aid in the upbuilding of the collections there is reason to believe. The National Museum has already certain collections of ceramics and exhibits in the industrial arts, which may be reckoned as a part of the National Gallery, and it is earnestly hoped that in the near future further development may be made along these lines.

The great and first need is a building—one which will adequately and appropriately afford a home for the institution, and allow in its plan for continued growth. Undoubtedly, an appropriation for this purpose will be asked of Congress at its next session; and, though it is possible that, in pursuance of what has been characterized as its "extravagant policy of economy," the request may be refused, it would seem more logical to believe that, with evidence of so much outside interest and enthusiasm, the national support will be forthcoming.

LEILA MECHLIN.

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THE VAGRANT AND THE RAILROAD.

BY ORLANDO F. LEWIS.

SEVERAL months ago, the presidents of many representative American railroads were asked if vagrancy on their roads is a serious question. The responses, often in significant detail, from a half-hundred railroads, representing more than half the total mileage of the United States, show that almost without exception they look upon vagrancy as presenting an important social and economic problem.

Specific Instances.

"SAN JOSE, CALIFORNIA, *June 3, 1907.*

"An attempt to wreck the early-morning Southern Pacific train between this city and San Francisco was thwarted to-day by the discovery of a large pile of ties on the track near Santa Clara. Two tramps have been arrested on suspicion. This is the third attempt to wreck a Southern Pacific train within a few weeks."—"*The Sun*," *New York, June 4, 1907.*

How does the Southern Pacific try to guard against such crimes? The General Manager of the Pacific System reports that "there are in the employ of the Southern Pacific Company, on the Northern District, about 100 policemen, about seventy-five per cent. of whom are located at or adjacent to San Francisco and Oakland, and upon the Southern Pacific ferry-boats in San Francisco Bay, the remainder being distributed along the line in the interior. Constables arrest a large number of these tramps, who are sent to the county jail for from five days to six months, according to the crime."

On April 22, 1907, the following record of an application for charitable assistance was made at the Joint Application Bureau, in the Charities Building, New York City:

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"—— had his left ankle broken last August, while stealing a ride on the railroad; was taken to the Memorial Hospital, Oneonta, and later transferred to the county house, where he remained five months; sent then by county authorities as far as Albany, and stole a ride from there to New York on a freight-train. He claims that his left ankle was improperly set; limps, and walks with a cane; asks aid."

How does the New York Central and Hudson River Railroad try to diminish vagrancy? The Assistant General Superintendent replies: "About thirty per cent. of all our police-department work is in connection with vagrants; they ride freight and passenger trains; annoy train crews and other employees; break and enter cars and stations and steal therefrom; they interfere with signals, place obstructions on tracks and stone trains." New York Central lines farther west report that it seems impossible to keep vagrants off freight-trains.

The Richmond, Fredericksburg and Potomac is but a short Southern line, eighty-eight miles long. The President's Office reports:

"On May 23, 1904, two colored men, about twenty-one years old, threw several sticks of wood under a passing freight-train, one of which lodged in point of switch; but, fortunately, no damage was done to the train. Guilty parties sentenced to jail for six months.

"On May 21, 1905, a switch to a loading track was tampered with, in that spikes were drawn, the lock removed and the switch-point left open about one-half inch. Investigation failed to discover the guilty parties.

"On November 22, 1906, two boys, ten and thirteen years old, fastened iron upon the rail with the intention of wrecking a train. One of the boys was sent to a reformatory indefinitely, subject to prison regulations."

What do railroads think about such train-wrecking attempts? President Underwood of the Erie writes that "any one found upon the tracks of a railroad company, without due license, should be a marked individual, or the perpetration of the recent Pennsylvania outrages may become too common for the interests of the American public, in whose behalf this recommendation is made."

Vagrancy a National Problem.—The West, East and South suffer; in our northeastern States tramps are reported scarce, because, as President Cram of the Bangor and Aroostook Rail-

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road writes, "from November until April, inclusive, our climatic conditions do not invite their wanderings." In Massachusetts, recent drastic tramp laws have resulted in a material reduction of vagrants. In Texas, emergency laws passed when Coxey's Industrial Army "took the road" have given railroads comparative freedom from vagrancy. In general, however, it is unfortunately safe to say that vagrancy exists throughout the United States.

Tramps and Vagrants.—"The Sun's" telegram of June 4, 1907, says that "two tramps have been arrested on suspicion." By the laws of some States, if the arrested destitute person has a settlement in a community he is a vagrant; if he comes from "somewhere else," he is a tramp. In these days of rapid transit, this is largely a distinction without a difference.

The word "tramp" does not always connote "pedestrian." It is probable that American tramps, in our land of glorious distances, are not lusty walkers. The Supervisor of the Wayfarers' Lodge in Philadelphia, a temporary shelter with work-test for homeless men, estimates that:

> "Many vagrants spend approximately one-third of their time in almshouses, one-third in houses of correction on sentences of three months or less and one-third in cheap lodging-houses; they live nearly all the time, wherever they are, more or less on charity or at the expense of the community. Many travel more than millionaires, usually on freight-trains, seldom walking."

On the Big Four Lines, some town authorities warn vagrants not to get off the trains, but to keep moving. On the Chicago, Burlington and Quincy, some town officers even put tramps upon passing freight-trains to facilitate their departure. On the Denver and Rio Grande, vagrants, when caught on freight-trains, frequently claim that they were allowed to board the train by train employees for a "consideration." On one road the tramp-tariff for riding over a whole division seems to be fifty cents.

Arrests.—"Two tramps have been arrested on suspicion." A simple arrest does not ordinarily strike terror. Sometimes arrested vagrants must be discharged for want of proof; generally, however, for lack of cooperation between town authorities and railroad officers. The treatment of trespassing vagrants is a constant matter of contention between towns and railroads. Towns,

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which frequently have no love for a railroad, insist that a vagrant, coming from nowhere and travelling on, has no claim upon the charity of a community. The town "moves them on," or at the most commits them for a short period to jail on a sentence that includes little if any labor. President James J. Hill of the Great Northern writes: "It is the almost universal custom for justices to order vagrants to leave town within twenty-four hours. When all neighborhoods are doing the same thing, the community receives exactly as much refuse as it gets rid of." This regrettable lack of cooperation will naturally continue, in small communities at least, until the expense of prosecution and maintenance of vagrants is made a State charge.

Sentences and Imprisonments.—Vagrancy, being a misdemeanor, with a kind of "blanket" definition that groups many human "odds and ends," results in short sentences, which have little or no deterrent or reformative effect. The Syracuse Charity Organization Society reports that the county penitentiary is a kind of winter vacation resort for tramps; the constable to whom the vagrants deliver themselves up in the fall fees them when they go out in the spring. In Easton, Pennsylvania, only ten per cent. of the prisoners are allowed to do any work at all. The Minneapolis Associated Charities reports that "the county jail has absolutely no provision for employing prisoners, some of whom remain six months or even longer." Probably much of the work required of short-term prisoners in jails and workhouses is largely "on paper."

Even short sentences are apt to be curtailed. Sixty-five per cent. of all the prisoners discharged in 1904 from the Philadelphia House of Correction served only half their time; fifty-seven per cent. had been previously committed to that institution; nearly nine per cent. had been there already *twenty or more times;* five persons *eighty or more times.* Aside from the striking social injustice of such "correctional" treatment, how inevitably do these facts suggest indeterminate sentences of cumulative length, hard labor during imprisonment, and compulsory farm colonies for vagrants!

Railroad Policing.—Few American railroads maintain systematic railroad policing, principally perhaps because the railroads that are trunk lines for tramps despair of diminishing the num-

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bers during the present lack of good cooperation with towns; railroads which have comparatively little trouble believe they do not need railroad police. Despite the semi-military police force of the Pennsylvania Railroad, the 900 vagrants arrested on that road in 1906 for trespassing were but a small part of the vagrants constantly passing over the road. Mr. James J. Hill writes:

"Hundreds of idle men infest empty cars on the Great Northern during the summer months. Tramps attempt to secrete themselves on every freight-train at any risk. A considerable number of these are killed or injured each year. They get on or off trains while in motion, and some suffer in life and limb. Others fall off when asleep. It would be difficult to gather reliable statistics on this point, because a large percentage of the tramps reported as killed on the railroads are really murdered. Men returning from the harvest fields with their wages are killed for their money by their more vicious and criminal fellows, the body is flung from the train while in motion and the reported death by railroad casualty is actually a case of homicide."

Injuries and Deaths.—To the expense of maintaining a railroad police force must be added the costs to railroads attendant upon the injuries or deaths of trespassing vagrants. Vice-President Van Etten of the Boston and Albany Railroad says there is danger of serious accident whenever an air-brake is suddenly applied in emergencies, which is what an engineer will do when he sees a man on the track who is likely to be run over. A vagrant injured by a railroad seems to be decidedly "*persona non grata*" to towns. According to President Murray of the Baltimore and Ohio Railroad,

"Cooperation in the case of injured vagrants is on the basis of the road doing all, if it can be brought about; if not, there is burial in the Potter's Field, or a bed in the charity ward of a hospital. Through its regular corps of physicians and surgeons, the necessary immediate attention is given to injured vagrants; hospital treatment is not withheld because of expense to the corporation. A similar practice is followed with the dead."

Both the Chicago and Northwestern and the Erie estimate that injuries and deaths of vagrants cost the road several thousand dollars annually. The following table gives the number of *killed and injured,* from 1901 to 1905, under the three classes of trespassers, passengers and employees:

	Killed.	Injured.	Total.
Trespassers	23,964	25,236	49,200
Passengers	1,960	39,470	41,430
Employees	16,243	286,047	302,290

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The annual statistics of deaths and injuries sustained by vagrants on American railroads furnish gruesome reading. The number of trespassers killed annually on American railroads exceeds the combined totals of passengers and trainmen killed annually. Several railroads estimate that from one-half to three-fourths of such trespassers are vagrants. Nor do these annual totals show signs of decreasing.

It is impossible to estimate how many vagrants use the railroads. If vagrants, beating their way on railroads, are killed as frequently as are trainmen in proportion to the number travelling, over a half-million vagrants ride yearly on American railroads, or use the right-of-way. In the above table, fewer injuries to vagrants are recorded than those sustained by passengers and employees, but undoubtedly many vagrants are hurt whose injuries are not so severe as to prevent them from eluding town and railroad police.

The Cost to Society.—In the second instance cited at the beginning of this article, it was stated that "—— had his left ankle broken last August while stealing a ride on the railroad; was taken to the Memorial Hospital, Oneonta, and later transferred to the county house, where he remained five months." The cumulative cost to society from injured vagrants is enormous. Because many of the charitable contributions are indirect, frequently in the form of individual almsgiving at kitchen door or on the street, the outlay does not attract conspicuous attention. The temptation felt to help by small donations the "victims of circumstances" renders crippled vagrancy often more profitable than able-bodied vagrancy.

Almshouses.—Throughout our land, almshouses tend to shelter vagrants, unless the town lockup or the city police-station gives them inadequate lodgings overnight, generally without requiring compensatory work. Common humanity requires that human beings, however disreputable, be housed and fed somewhere. In consequence, almshouses, destined primarily for the industrially unfit and the aged, and those made poor by misfortune, become far too frequently "catch-alls" for harboring tramps, who mingle with those for whom the almshouses are specially maintained.

The naïve confidence felt by some wayfarers that society will take care of them, "whether or no," would be refreshing if it

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were not significant of the price society pays for its own tolerance of the manufacture and perpetuation of vagrants. On November 20, 1906, a wanderer, fifty-eight years of age, of whom the following record was made, applied for aid at the Joint Application Bureau.

"He stated that he had been in the city about a week this time, having walked from Washington, D. C., since last April. He peddles shoelaces and collar-buttons, and was arrested and sent to Harts Island Workhouse for ten days because he was thought to be begging. The man spent last winter in Washington, where he says he was locked up for six months in the workhouse for being intoxicated. Before going to Washington the man spent about five years in Philadelphia, where he was well known at the almshouse, having been there four or five times. He lost his arm through jumping from a moving freight-train ten years ago. The man's desire to go to Maine is based on his belief that he will be admitted to the almshouse there, having been refused admission to the almshouse here, which he would just as willingly enter as any other poorhouse, but he knows some people in Maine. He says, if he were fitted out with clothes, he would walk to Maine. He has no stock left."

Dangerous Vagrants.—Irresponsible tramps not only commit depredations upon property, but expose human lives to danger and death. As cited above, vagrants interfere with signals on the New York Central Railroad, place obstructions on tracks and stone trains. On the Chicago and Northwestern, the tracks are lined with vagrants who refuse to leave the cars. Frequently, train crews are assaulted by these vagrants. A number of suits have been successfully brought against the Illinois Central by trespassers, who claim that they were pushed or kicked from the train while in motion, thus sustaining injuries through the illegal acts of trainmen. The conviction of an ejected vagrant depends upon the testimony of the trainmen; their presence at court for this purpose would involve a change of crews, loss of time and no little expense. Therefore, many prosecutions are dropped.

On the Norfolk and Western Railroad, train employees have been killed or injured by assaults from trespassing vagrants. On the Cumberland Valley Railroad, vagrants occasionally give outlying telegraphers some annoyance, which at train-time might lead to serious accident.

Laws.—Present railway trespass laws are often inadequate.

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The Michigan Central reports a railway trespass law in Michigan with no penalty attached. The Lehigh Valley reports that there is legislation in the States through which its lines run, punishing tramps; but there is nothing specially applicable to the prohibition of illegal train-riding in the laws of New York, New Jersey or Pennsylvania.

Mr. E. A. Handy, General Manager of the Lake Shore and Michigan Southern, endeavored unsuccessfully, in 1904, to secure in several States the enactment of laws prohibiting trespassing on the right-of-way and tracks of railroad companies. Assistant General-Superintendent Crowley of the New York Central and Hudson River Railroad says that a more severe law against trespassing might have some effect; but he would doubt very much the possibility of obtaining any law that would inflict a severe penalty for what in the minds of most people is no offence at all. The Boston and Albany Railroad recommends that laws follow the English practice. All trespassing on railroad property should be absolutely forbidden; it should be the duty of law officers to police the tracks, and arrest everybody found trespassing thereon.

A Proposed Trespass Law.—The following draft of a proposed railway trespass law is intended to combine the essential features of the present Massachusetts law with those of drafts suggested by the New York Central Lines and the Wabash Railroad:

"Be it enacted, etc.:

"Section I. Whoever, without legal right, walks on or stands on or crosses a railway track or right-of-way, except where the same crosses station-grounds or a highway (is guilty of a misdemeanor), shall forfeit not less than $5 nor more than $50, and may be further punished by imprisonment for not more than sixty days at hard labor.

"Section II. Whoever, without legal right, attempts to enter or enters or is on or upon any railway rolling-stock in motion or stationary, except for the affirmatively proved *bona fide* purpose of transacting lawful business with the company having custody of such rolling-stock (is guilty of a misdemeanor), shall forfeit not less than $10 nor more than $100, and may be further punished by imprisonment for not more than 120 days at hard labor.

"Section III. Upon view of the offence, any person lawfully authorized to make arrests may, without warrant, [and shall] arrest all persons offending against the provisions of either of the foregoing sections."

Remedies.—The principal recommendations made by the rail-

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roads are: (1) greater cooperation between towns and railroads in prosecuting and convicting vagrants; (2) imprisonment of convicted vagrants at hard labor for considerable periods; (3) enforcement of trespass laws when adequate; (4) the strengthening of inadequate trespass laws; (5) the adoption of trespass laws, where none exist; (6) national vagrancy laws, if necessary and possible; (7) costs of prosecution and maintenance of vagrants to be made a State charge; (8) refusal by individuals of "kitchen-door aid" to vagrants; (9) a study of the success of Canada and European countries in prohibiting railroad vagrancy.

Massachusetts has a State police official known as a "tramp officer." Police work in each State should be carried on vigorously against vagrants by four cooperating agencies: (1) railroad police; (2) special State police officers; (3) town police; (4) special mendicancy police officers in large cities.

The treatment of vagrancy for the present should be deterrent. We do not know at all how many unnecessary vagrants we have. England, with an army of the unemployed, has in the vagrant class only three per cent. of honest unemployed workmen seeking work, according to recent authoritative opinions.

At present there seems in general no such dearth of employment as would force out upon the road the man who is willing to work. The love of change, the roving spirit, temporary accident or injury, are causes that tend to make the workman an accidental vagrant, who is liable to acquire an intention *not* to work, and become thus an habitual vagrant. The comparative ease with which the penniless man can beat his way on railroad, at farmhouse door or on the city streets explains in large measure "why vagrants are."

Our chief effort at present should be to diminish vagrancy by better laws, stricter enforcement of laws and deterrent examples of long-term, indeterminate sentences. This procedure is not uncharitable, but rather, in a real sense, humane. We should withdraw from the vagrant the easy chance to maim himself on freight-cars. He should not be allowed to become unsocial by voluntarily shirking work, that besides earning for him his daily bread brings him in honest touch with his fellow man. He should no longer be allowed to crawl away into foul-smelling, vermin-infested ten-cent lodging-houses in our large cities, where the three "D's" of Dirt, Disease and Demoralization forecast

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a fourth "D," Death. We should not permit ourselves, by petty gifts upon the street, to purchase gratification at the price of fostering idleness and mendicancy in the vagrant. We should not permit the tramp to use our parks as dormitories, after being pauperized by indiscriminate and inadequate "midnight breadlines" or other curbstone charities.

In short, the able-bodied vagrant should be turned by law, and by the practice of individuals, toward work. In cities, municipal lodging-houses should provide clean, respectable, temporary shelters for the homeless, requiring registration, compulsory bathing and fumigation of clothing, giving food and lodgings, and requiring in return a reasonable amount of work. In towns lodging vagrants, there should be provided for them a separate house; or, if they are lodged at the almshouse, separate and distinct quarters.

In cities troubled with vagrants, there should be at least one special mendicancy officer, in plain clothes, whose entire work it should be to reform or prosecute beggars. Departments of Health should prescribe adequate rules governing the maintenance and supervision of common lodging-houses. Charitable bodies maintaining lodging-houses should make them models of their class, and missions that give food and lodging to destitute men should require, except in special cases, a reasonable amount of work.

We need two new State institutions. The first is a compulsory labor colony in each State, to which habitual vagrants may be committed to rigorous labor, preferably agricultural, for an indeterminate sentence. We need in each State at least one hospital for curable inebriates. Every charitable society knows to what extent the curable cases of inebriety demand an extended free treatment, that at present is impossible except in two States, or except to persons with means sufficient to purchase private care at a private "cure."

But, principally, we need a better public appreciation of the seriousness and the prevalence of vagrancy. Better public knowledge should be followed by better cooperation between towns, railroads, charitable societies, the press and private individuals, all working to diminish the unnecessary wandering of homeless men. The State should be the unit of activity against vagrancy. Local organizations or communities can at their best be rigorous

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only within their limits of activity, and the vagrant wayfarer passes on to the next "easy" town. In such cooperation, the State Board of Charities or Control seems the natural body to take a guiding position. Misinformed sympathy for the vagrant must be overcome by well-grounded facts, which should clearly show that rigorous efforts to diminish vagrancy by consistent enforcement of law are beneficial not only to society, in reducing its toll to the injured and idle, but to the railroads, in diminishing thefts, injuries and accidents, and also to the vagrant, in impressing upon him the age-long lesson that "man shall earn his bread by the sweat of his brow."

ORLANDO F. LEWIS.

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THE DRAGO DOCTRINE.*

BY CRAMMOND KENNEDY.

Is the forcible collection of contract debts in the interest of international justice and peace?

It has often happened that negotiations which have been commenced between two Governments for the settlement of the

* Mr. Crammond Kennedy's paper on this subject, which was read at the first annual meeting of The American Society of International Law, last April, in Washington, is divided into two parts. In the first part, he examines the diplomatic correspondence between the Venezuelan government and the governments of Great Britain, Germany and Italy, respectively, the communications which passed between those governments and the United States, and the protocols upon the execution of which the blockade of Venezuela's ports was raised and the question of priority of payment to the creditor nations was referred for determination to the Hague tribunal.

From this examination Mr. Kennedy comes to the following conclusions: (1) that the triple blockade was not instituted originally on account of any default in payment of Venezuela's public debt, principal or interest, but for the purpose of obtaining redress for wrongs and outrages inflicted by Venezuelans on the persons and property of the subjects of the blockading Powers, resident in Venezuelan territory, during internecine strife in that country; (2) that an opportunity for a settlement of these claims by impartial arbitration had been offered to Venezuela and had been rejected by her before the Powers resorted to force; (3) that Mr. Drago misconceived the character and purpose of the tripartite intervention, and that the so-called "Drago doctrine," which has been evolved from his note, embodies this misapprehension and obscures the real significance of the proceeding; and (4) that the Powers never intended to acquire or permanently occupy Venezuelan territory, and expressly disavowed any such purpose. These conclusions are supported by references to the official documents, including the finding of the Hague tribunal, "that since 1901 the government of Venezuela categorically refused to submit its disputes with Germany and Great Britain to arbitration, which was proposed several times, and especially by the note of the German government of July 16, 1901."

In the second part of his paper, which is printed below, Mr. Kennedy takes the ground that the opinions of publicists and the practice of governments favor the rule of non-intervention for the collection of contract debts, but that the international *right* to intervene is and must always be held in reserve, although, as a rule, it should not be exercised without affording a previous opportunity of settlement to the debtor government by impartial arbitration.—EDITOR N. A. R.

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claims of the citizens or subjects of the one against the other for injuries to person or property have been extended so as to include claims arising on contract. But so averse have Governments been in practice, to make default in payment of the national debt a matter of diplomatic intervention that, even where the words "all claims" have been used in these arbitral conventions, it has been held that, unless expressly mentioned, claims arising upon public bonds were not within the jurisdiction of the arbitral tribunal and could not be considered. It was so held by Sir Frederick Bruce, as umpire of the United States and New Granadian Commission organized under the claims convention of September 10th, 1857; and also by the United States Commissioner (Wadsworth) and the Mexican Commissioner (Zamacona) under the claims convention of July 4th, 1868, between the United States and Mexico—although, in both cases, claims founded on the public debt had been referred to the Commission by the Secretary of State.

On that occasion, Mr. Commissioner Wadsworth said:

"Although the United States Government has assumed the responsibility of presenting here a claim for non-payment of overdue coupons on a portion of the recognized bonds of the Republic of the Government of Mexico, and demands an award, nevertheless it appears to me that neither Government has with sufficient clearness agreed to refer such claims to this commission, and it is my decision that this case be dismissed without prejudice to the rights of the holders of the bonds and coupons."

In his concurring opinion, Mr. Zamacona brought out one of the objections commonly urged against diplomatic intervention on behalf of such claims—as follows:

"The defence here maintains that claimants received bonds to the amount of $33,000. . . . Now, instead of $33,000, the claimants present $47,000 of bonds. It may very well be that they have obtained the difference, as they say they did, but it may also very well be that they may have received this additional sum of bonds from some holder who perhaps is not an American citizen. Accepting this as a diplomatic claim, when in the future claims have to be settled between Mexico and the United States, the whole of the debt of the former would be covered by the flag of the latter, whose citizens would appear as monopolizing Mexican bonds."*

* Moore's Arbs., Vol. IV, p. 3616. It was held, however, by the umpire of this Commission that it had no jurisdiction of *any* claims arising *ex contractu*.

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The same view was taken by the mixed commission that sat at Caracas, under the claims convention of April 25th, 1866; and, accordingly, a claim for $558,150, of which about two-thirds was for interest, founded on bonds of the consolidable debt of Venezuela, was dismissed without prejudice; but, curiously enough, when, nearly a quarter of a century later, the awards of that Commission were reopened on account of alleged fraud on the part of the arbitrators, the new Commission, sitting at Washington in 1889-90, rejected the authority of the preceding decisions and gave an award to the claimants for the face of the bonds, counting the *peso* at 75 cents gold coin of the United States, with five per cent. interest *per annum,* from April 26th, 1853, to September 2nd, 1890. Elaborate opinions were given by all three Commissioners (Andrade dissenting), which are printed *in extenso* in the fourth volume of Moore's International Arbitrations.

It is to be especially observed, however, that in none of these opinions is the *right* of diplomatic intervention by the Government of the individual holders of foreign national bonds, on which default has been made, brought into question. Said Sir Frederick Bruce:

"The Government reserves to itself on special grounds the right to determine when and under what conditions such support shall be given, and this commission cannot assume, upon the strength of a general term, and in the absence of express language to that effect, that the government of the United States intended to delegate to it powers which it has not exercised itself in a matter of so much delicacy."

Commissioners Little and Findlay, of the United States and Venezuelan Commission of 1889-90, refer to Lord Palmerston's famous circular, and to Hall's remarks upon it in his International Law, Mr. Findlay saying:

"A claim is none the less a claim because it originates in contract instead of tort. The refusal to pay an honest claim is no less wrong because it happens to arise from an obligation to pay money instead of originating in violence offered to persons or property. Torts, as a rule, present more aggravated cases of injustice and affect the citizens at points which more loudly call for redress than ordinary breaches of contract, but, after all, the difference lies in degree only."*

Referring to Sir Frederick Bruce's observation that the policy

* United States and Venezuela Claims Commission, Opinions, 335.

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of non-intervention had been pursued in such cases by the United States, Mr. Little said:

"Very true, bonds are not of the character of claims ordinarily pressed by one Government against another; but, since the celebrated circular of Lord Palmerston in 1848 to British representatives at foreign courts, it would appear to be the established English doctrine, at least that a State has the *right* authoritatively to interpose in behalf of its subjects or citizens in support and enforcement of claims founded on bonds against other states, if it chooses to do so. (Phillimore, Int. Law, Vol. 2, 8; Hall, Int. Law, 236, 237.) And both the United States and Great Britain, as also other Powers, have repeatedly, through treaties and other agencies, secured money due their citizens on contractual obligations from other states. And why not?

"Hall, with much reason, says:

"'Fundamentally, however, there is no difference in principle between wrongs inflicted by breach of a monetary agreement and other wrongs for which the state, *as itself the wrongdoer*, is immediately responsible.'

"The difference which is made in practice is in no sense obligatory, and *it is open to the Governments to consider each case by itself, and to act as seems well to them on the merits.*"*

This is the received opinion, against which I do not believe that the so-called Drago doctrine will prevail. Nevertheless, it is not improbable that a thorough discussion of the subject at The Hague would be of wide-spread benefit in making the advocates of the two opinions better acquainted with their respective views.

Mr. Drago does not seem to me to deal with actual conditions. He speaks as if these defaults were altogether the misfortune, and not at all the fault, of the defaulting Governments and peoples. But the defaulters are sometimes grievously to blame.†

* United States and Venezuela Claims Commission, Opinions, 314.

† After stating in his Instructions to the Delegates of the United States to the Third International Conference of American States, held at Rio de Janeiro last summer, that it has long been the established policy of the United States not to use its armed forces for the collection of ordinary contract debts due to its citizens by other Governments, Mr. Root observed (under date of June 18th, 1906):

"It is doubtless true that the non-payment of public debts *may* be accompanied by such circumstances of fraud and wrongdoing or violation of treaties as to justify the use of force."—Report of the Delegates, Doc. No. 365, Sen., 59th Cong., 2d Sess., p. 41.

In his reply to Mr. Drago's note, without expressing concurrence or dissent, Mr. Hay observed:

"The President declared in his Message to Congress, December 3rd, 1901, that by the Monroe Doctrine 'we do not guarantee any State against punishment if it misconducts itself provided that punishment does not take the form of the acquisition of territory by any non-American Power.'"

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The international right of intervention for the collection of contractual debts of Governments, although it may rarely be exercised, cannot be surrendered and must be held in reserve as a final sanction in the interest of civilization. Creditor Governments cannot stand idly by, indefinitely, and see members of the family of nations live what has been styled a life of public shame —appealing to arms instead of reason, to force instead of law, and making their territories scenes of ever-recurring violence and bloodshed and destruction and misery. So-called "revolutions" are financed to a very considerable extent at the expense of the foreign creditors of the state. Sources of income that have been appropriated by treaty as security for the payment of public debts are seized and misappropriated, and the prevailing lawlessness leads not only to outrages, sometimes of the most ferocious character on innocent individuals, natives and foreigners, but also to the plunder or reckless expenditure of the public revenues, and to that general insecurity of life and property in which progress and prosperity (no matter how bountiful nature may have been to the country) are impossible.*

Mr. Drago makes the following citation from Alexander Hamilton:

"Contracts between a nation and private individuals are obligatory according to the conscience of the sovereign, and may not be the object of compelling force. They confer no right of action contrary to the sovereign will."

But this does not seem to me to support Mr. Drago's contention that under no circumstances should the public debt of a state be forcibly collected by other states. Hamilton was simply stating the old rule that the sovereign could not be sued at law

* Referring to an episode in the financial history of San Domingo, Professor J. B. Moore, as agent for the United States, under the protocol of January 31st, 1903, for the settlement of the claims of the San Domingo Improvement Company against the Dominican Republic by arbitration, observed:

"Evidently no one contemplated such a thing as *expulsion by force* from the security. Possibilities of earthquakes, tempests, floods, revolutions were doubtless contemplated, as reflected in the rate per cent.; but no one dreamed of possible national seizure of the security; no one thought that after San Domingo had received the money, a Government would come into existence that would seize and destroy the security on the faith of which it was given. Otherwise there would either have been no loan at all or else careful provision would have been made to restrain the Government from the misuse of its physical force."—Argument of the United States before the Commission of Arbitration, p. 94.

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by the subject; or, in its more modern form, that the state is not suable except to the extent and in the manner which it itself prescribes. He was not speaking of international rights and duties, but of the "right of action" as between subject and sovereign.

Vattel, who wrote before Hamilton, ranks a contract between a Government and a foreign individual with treaties between nations, and there is no question that treaties may be "the object of compelling force." In Hamilton's time, the United States could not be sued at law by the private citizen; but, since 1855, it has been suable in the Court of Claims, and, since 1863, subject to final judgments, on contracts with its citizens, express or implied, or on any law of Congress or any regulation of an executive department, either party having the right of appeal to the Supreme Court in cases involving more than $3,000;* and, under the Tucker Act of 1887, as recently construed by that court, the United States may also be sued in certain cases of a tortious character.†

It is no longer true in the United States (or, as a rule, in other civilized countries) that the nation's contracts are "obligatory according to the conscience of the sovereign." The obligation is now decided by the conscience of the court, applying the law to the facts, and it would be revolutionary for Congress to refuse to pay such judgments. In his famous note, Mr. Drago says:

> "The Argentine Government has made its provinces indictable, and has even adopted the principle that the nation itself may be brought to trial before the Supreme Court on contracts which it enters into with individuals."‡

The petition of right by which, in England, a claim is prosecuted by a subject against the Crown, has endorsed on it, when entertained by the court: "*Soit droit fait al partie.*"

Its distinguished author is not alone in claiming Hamilton and Hamilton's country as supporting (in principle) "the Drago doctrine"; for it is stated in the Report of the Delegates to the Third International Conference at Rio de Janeiro that:

* 10 Stats. at Large, 612; 12 Stats. at Large, 765; United States *vs.* Klein, 13 Wall., 128, 144, 145.

† Dooley *vs.* United States, 182 U. S., 224, 228; United States *vs.* Lynch, 188 U. S., 465, 475, 476; Basso *vs.* United States, 40 Ct. Clms., 202, 215, 216.

‡ Forn. Rels., 1903, p. 2.

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"It is well known that the principle advanced and so ably discussed by Doctor Drago has been for a great many years maintained by the United States, one of whose statesmen, Alexander Hamilton, early gave definite form to the principle, as did Lord Palmerston also when Prime Minister of England."*

We have already cited Mr. Hay's memorandum on Mr. Drago's note and Mr. Root's instructions to the delegates; and, as for Lord Palmerston, he has always been regarded as the champion of the principle that there is a reserved international right of forcible intervention for the collection of the public debt of a defaulting state. In his famous circular, addressed in 1848 to British representatives at foreign courts, his lordship said:

"If the question is to be considered in its bearing on international right, there can be no doubt whatever of the *perfect right* which the Government of every country possesses to take up, as a matter of diplomatic negotiation, any well-founded complaint which any of its subjects may prefer against the Government of another country, or any wrong which from such foreign Government those subjects may have sustained; and if the Government of one country is entitled to demand redress for any one individual who may have a just but unsatisfied pecuniary claim upon the Government of another country, the right so to require redress cannot be diminished merely because the extent of the wrong is increased, and because, instead of there being one individual claiming a comparatively small sum, there are a great number of individuals to whom a very large amount is due."

After explaining that the British Government had pursued a policy of non-intervention in such cases, in the hope that the losses of imprudent men would prove a salutary warning to others and prevent foreign loans from being raised in Great Britain except by Governments of known good faith and ascertained solvency, his lordship concluded as follows:

"But, nevertheless, it might happen that the loss occasioned to British subjects might become so great that it would be too high a price for the nation to pay for such a warning as to the future, and in such a state of things it might become the duty of the British Government to make these matters the subject of diplomatic negotiation."

To this, Mr. Hall adds, in a note containing the foregoing citation:

"A short time previously, Lord Palmerston, in answer to a question in the House of Commons, indicated that under certain circumstances

* Report of the Delegates to the Third International Conference, held at Rio de Janeiro in 1906, p. 12.

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he might be prepared to go to the length of using force. The doctrine and the principles of policy laid down in Lord Palmerston's circular have been lately reaffirmed by Lord Salisbury. See the 'Times' of January 7th, 1880."*

Assuming that there is an analogy between the relations of states in the family of nations and the relations of individuals in the state, it is very significant that as between individuals in every civilized country the simplest legal obligation has the whole force of government behind it. If I borrow money, and do not repay it when due, my creditor can sue me wherever he can find me; he can seize and sell my property in execution of his judgment; if I have made conveyances in fraud of my creditors, he can have these fraudulent transactions exposed and set aside, and compel me to pay to the uttermost extent of my ability. If as mortgagor I am sold out of house and home in foreclosure, and refuse to quit the premises, a writ of ejectment will issue against me, and if I commit a breach of the peace by resisting I may be put in jail.

There can be no permanent peace without justice, and, with the world as it is, the *right* to enforce pecuniary obligations between nations—as between individuals—must be reserved in the interest of civilization. This sanction should not be invoked between nations (or men) inconsiderately, or ever, perhaps, except as a last resort; and, when the amount or the equity of the obligation is in doubt, and impartial arbitration is proposed by the debtor Government, it should be accepted by the creditor. But, between nations as between individuals, the sanction of force will only become unnecessary when what Vattel calls the "innate and necessary law" has entire possession and control of the souls of men and the state can, *therefore,* do no wrong.

But this belongs to the time of which poets have dreamed and seers foretold—when "mercy and truth are met together and righteousness and peace have kissed each other"; when men "shall beat their swords into ploughshares and their spears into pruning-hooks: when nation shall not lift up sword against nation, nor learn war any more."

Meanwhile, this international right of which we have been speaking must be reserved, to be exercised by and by, let us hope, in better ways than war; in such a concert of nations for the

* Hall's Inter. Law, 1st ed., part II, chap. VII, § 87, pp. 237, 238.

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ascertainment and administration of international justice as would make resistance futile, as, indeed, it would have been in the tripartite blockade; or, better yet, as in the cases of Great Britain in Egypt and the United States in San Domingo, by helping the debtor states so to use their resources and preserve the peace as to enable them to regain their credit and to pay off their debts and thus to give them a fair start on the road that leads to national development and individual well-being.

CRAMMOND KENNEDY.

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RETROSPECTS OF THE DRAMA.

BY HENRY A. BEERS, PROFESSOR OF ENGLISH LITERATURE IN YALE UNIVERSITY.

THE English drama has been dead for nearly two hundred years. Mr. Gosse says that in 1700 the English had the most vivacious school of comedy in Europe. And, if their serious drama was greatly inferior, still the best tragedies of Dryden and Otway—and perhaps of Lee, Southerne and Rowe—made not only a sounding success on the boards, but a fair bid for literary honors. Ten years later the drama was moribund, and in 1747 its epitaph was spoken by Garrick in the sonorous prologue written by Dr. Johnson for the opening of Drury Lane:

> "Then, crushed by rules and weakened as refined,
> For years the power of Tragedy declined:
> From bard to bard the frigid caution crept,
> Till declamation roared whilst passion slept.
> Yet still did Virtue deign the stage to tread;
> Philosophy remained though nature fled.
> But, forced at length her ancient reign to quit,
> She saw great Faustus lay the ghost of wit:
> Exulting Folly hailed the joyful day,
> And pantomime and song confirmed her sway—"

That is, as has been complained a hundred times before and since, the opera and the spectacular show drove the legitimate drama from the stage.

The theatre, indeed, is not dead: it has continued to live and to flourish, and is furnishing entertainment to the public to-day, as it did two hundred—nay, two thousand—years ago. The theatre, as an institution, has a life of its own, whose history is recorded in innumerable volumes. Playhouses have multiplied in London, in the provinces, in all English-speaking lands. The callings of the actor and the playwright have given occupation

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to many, and rich rewards to not a few. Scholars, critics and literary men are apt to look at the drama as if it were simply a department of literature. In reading a play, we should remember that we are taking the author at a disadvantage. It is not meant to be read, but to be acted. It is not mere literature: it is both more and less than literature. The art of the theatre is a composite art, requiring the help of the scene-painter, the costumer, the manager, the stage-carpenter, sometimes of the musician and dancer, nowadays of the electrician; and always and above all demanding the interpretation of the actor. It is not addressed to the understanding exclusively, but likewise to the eye and the ear. It is a show, as well as a piece of writing. The drama can subsist without any dialogue at all, as in the pantomime; or with the dialogue reduced to its lowest terms, as in the Italian *commedie a soggetto,* where the actors improvised the lines. "The skeleton of every play is a pantomime," says Professor Brander Matthews, who reminds us that not only buffoonery and acrobatic performances may be carried on silently by stock characters like Harlequin, Columbine, Pantaloon and Punchinello; but a story of a more pretentious kind may be enacted entirely by gesture and dumb show, as in the French pantomime play "*L'Enfant Prodigue.*" A good dramatist includes a good playwright, one who can invent striking situations, telling climaxes, tableaux, *ensemble* scenes, spectacular and histrionic effects, *coups de théâtre.* These things may seem to the literary student the merely mechanical or technical parts of the art. Yet, without them, a play will be amateurish, and no really successful dramatist has ever been lacking in this kind of skill.

Still, although stage presentation, the *mise en scène,* is the touchstone of a play as play, it is of course quite possible to read a play with pleasure. It is even better to read it than to see it badly acted, just as one would rather have no pictures in a novel than such pictures as disturb one's ideas of the characters. A musical adept can take pleasure in reading the score of an opera, though he would rather hear it performed. This is not to say that a play depends for its effect upon actual performance in anywhere near the same degree as a musical composition; for written speech is a far more definite language than musical notation. I use the latter only as an imperfect illustration.

This professional quality has been much insisted on by prac-

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tical playwrights, who are properly contemptuous of closet drama. But just what is a closet drama? Let it be defined provisionally as a piece meant to be read and not acted. Yet a play's chances for representation depend partly on the condition of the theatre and the demands of the public. Mr. Yeats, for example, thinks that a play of any poetic or spiritual depth has no chance to-day in a big London theatre, with an audience living on the surface of life; and he advises that such plays be tried in small suburban or country playhouses before audiences of scholars and simple, unspoiled folk. To the English public, with its desire for strong action and variety, Racine's tragedies are nothing but closet dramas; and yet they are played constantly and with applause on the French theatre. In the eighteenth century, when the English stage still maintained a literary tradition—though it had lost all literary vitality—the rankest sort of closet dramas were frequently put on and listened to respectfully. No manager now would venture to mount such a thing as "Cato" or "Sophonisba" or "The Castle Spectre." The modern public will scarcely endure sheer poetry, or long descriptive and reflective tirades even in Shakespeare. Such passages have to be cut in the acting versions. The Elizabethan craving for drama was such that everything was tried, though some things, when brought to the test of action, proved failures. Ben Jonson's heavy tragedies, "Catiline" and "Sejanus," failed on the stage; and Daniel's "Cleopatra" never got so far as the stage, a rare example of an Elizabethan closet drama. Very likely, modern literary plays like "Philip Van Artevelde" and Tennyson's "Queen Mary" might have succeeded in the seventeenth century. For the audiences of those days were omnivorous. They hungered for sensation, but they enjoyed as well fine poetry, noble declamation, philosophy, sweet singing, and the clown with his funny business, all in close neighborhood. They cared more for quantity of life than for delicate art. Their art, indeed, was in some ways quite artless, and the drama had not yet purged itself of lyric, epic and didactic elements, nor attained a purely dramatic type. Since then, the French, whose ideal is not so much fulness of life as perfection of form, have taught English playwrights many lessons. Brunetière, speaking of the gradual evolution and differentiation of literary kinds *(genres)*, says that Shakespeare's theatre, as theatre, exhibits the art of drama in its infancy.

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Perhaps, then, no hard and fast line can be drawn between an acting drama and a closet play. It is largely a matter of contemporary taste. "Cato," we know, made a prodigious hit. Coleridge's "Remorse," a closet drama if there ever was one, and a very rubbishy affair at that, was put on by Sheridan, though with many misgivings, and lasted twenty nights, a good run for those days. No audience now would stand it an hour. And yet we have seen Sir Henry Irving forcing Tennyson's dramatic poems into a temporary *succès d'estime*. "Samson Agonistes" is a closet play, without question; but is "The Cenci"? Shelley wanted it played, and had selected Miss O'Niel for the rôle of Beatrice. But it never got itself played till 1889, when it was given before the Shelley Society at South Kensington. The picked audience applauded it, just as an academic audience will applaud a rehearsal of the "Antigone" in the original Greek; but the dramatic critics sent down by the London newspapers to report the performance were unconvinced.

Let it be granted, then, that the question in the case of any given play is a question of more or less. Still, the difference between our modern literary drama, as a whole, and the Elizabethan drama—which was also literary—as a whole, I take to be this: that in our time literature has lost touch with the stage. In the seventeenth century, the poets *wrote for* the theatre. They knew that their plays would be played. In the nineteenth century, English poets who adopted the dramatic framework did not write for the theatre. They did not expect their pieces to be played, and they addressed themselves consciously to the reader. When one of them had the luck to get upon the boards, it was an exception, and the manager generally lost money by it. Thus, in the late thirties and early forties, in one of those efforts to "elevate the stage," which recur with comic persistence in our dramatic annals, Macready rallied the literati to his aid and presented, among other things, Taylor's "Philip Van Artevelde," Talfourd's "Ion," Bulwer's "Richelieu" and "The Lady of Lyons," and Browning's "Stafford" and "A Blot in the 'Scutcheon." The only titles on this list that secured a permanent foothold on the repertoire of the playhouses were Bulwer's two pieces, which were precisely the most flimsy of the whole lot, from the literary point of view. "A Blot in the 'Scutcheon" has been tried again. As I saw it a number of years

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ago, with Lawrence Barrett cast for Lord Tresham and Marie Wainwright as Mildred, it seemed to me—in spite of its somewhat absurd *motivirung*—decidedly impressive as an acting play. On the other hand, "In a Balcony," though very intelligently and sympathetically presented by Mrs. Lemoyne and Otis Skinner, was too subtle for a popular audience, and was manifestly unfitted for the stage.

The closet drama is a quite legitimate product of literary art. The playhouse has no monopoly of the dramatic form. Indeed, as the closet dramatist is not bound to consider the practical exigencies of the theatre, to consult the prejudices of the manager or the spectators, fill the pockets of the company, or provide a rôle for a star performer, he has, in many ways, a freer hand than the professional playwright. He need not sacrifice truth of character and probability of plot to the need of highly accentuated situations. He does not have to consider whether a speech is too long, too ornate in diction, too deeply thoughtful for recitation by an actor. If the action lags at certain points, let it lag. In short, as the aim of the closet dramatist is other than the playwright's, so his methods may be independent.

In the rather bitter preface to the printed version of "Saints and Sinners" (1891), Mr. Henry Arthur Jones complains of "the English practice of writing plays to order for a star performer," together with other "binding and perplexing . . . conventions and limitations of playwriting," as "quite sufficient to account for the literary degradation of the modern drama." The English closet drama of the nineteenth century is an important body of literature, of higher intellectual value than all the stage plays produced in England during the same period. It is not necessary to enumerate its triumphs: I will merely remind the reader, in passing, that work like Byron's "Manfred," Landor's "Gebir," George Eliot's "The Spanish Gypsy," Horne's "Orion," Beddoe's "Death's Jest-Book," Arnold's "Empedocles on Etna," Tennyson's "Becket," Browning's "Pippa Passes" and Swinburne's "Atalanta in Calydon," is justified in its assumption of the dramatic form, though its appeal is only to the closet reader. I do not forget that one or two of these have been tried upon the stage, but they do not belong there, and, as theatre pieces, were flat failures.

It is hard to say exactly what qualities ensure stage success.

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As reading plays, Lillo's "George Barnwell" is intolerably stilted, Knowles's "Virginius" insipid, "The Lady of Lyons" tawdry; yet all of them took notoriously, and the last two—as any one can testify who has seen them performed—retain a certain effectiveness even now. Perhaps the secret lies in simplicity and directness of construction, unrelaxing tension, quick movement, and an instinctive seizure of the essentially dramatic crises in the action. In a word, the thing has "go"; lacking which, no cleverness of dialogue, no epigrammatic sharpness of wit or delicate play of humor can save a comedy; and no beauty of style, no depth or reach of thought, a tragedy. Hence it is pertinent to remark how many popular playwrights have been actors or in close practical relations with the theatre. In the seventeenth century this was a matter of course. Shakespeare was an actor, and Molière and Jonson and Marlowe and Greene and Otway, and countless others. Cibber was an actor and stage-manager. Sheridan and both Colmans were managers. Garrick and Foote wrote plays as well as acted them. Knowles, Boucicault, Robertson, Pinero and Stephen Phillips have all been actors. Conceded that this professional point of view has been rightly emphasized, yet before the acted drama can rank as literature, or even hope to hold possession of the stage itself for more than a season, it must stand a further test. It must read well, too. If it is no more than an after-dinner amusement, without intellectual meaning or vital relation to life: if it has neither strength nor truth nor beauty as a criticism of life, or an imaginative representation of life, what interest can it have for serious people? Let us stay at home and read our Thackeray. Eugène Scribe was perhaps the cunningest master of stagecraft who ever wrote. Schlegel ranked him above Molière. He left the largest fortune ever accumulated by a French man of letters. His plays were more popular in all the theatres of Europe than anything since Kotzebue's melodramas; and all European purveyors for the stage strove to imitate the adroitness and ingenuity with which his plots were put together. But if one to-day tries to *read* any one of his three hundred and fifty pieces—say, "Adrienne Lecouvreur" or "La Bataille des Dames"—one will find little in them beyond the mechanical perfection of the construction, and will feel how powerless mere technical cleverness is to keep alive false and superficial conceptions.

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When it is asserted, then, that the British drama has been dead for nearly two hundred years, what is really meant is that its *literary* vitality went out of it some two centuries ago, and has not yet come back. It is hard to say what causes the breath of life suddenly to enter some particular literary form, inspire it fully for a few years, and then desert it for another; leaving it all flaccid and inanimate. Literary forms have their periods. No one now sits down to compose an epic poem or a minstrel ballad or a five-act blank-verse tragedy without an uneasy sense of anachronism. The dramatic form had run along in England for generations, from the mediæval miracles down to the rude chronicle histories, Senecan tragedies, and clownish interludes of the sixteenth century. Suddenly, in the last years of that century, the spark of genius touched and kindled it into the great drama of Elizabeth. About the middle of the eighteenth century life abandoned it again, and took possession of the novel. Fielding is the point of contact between the dying drama and new-born fiction. The whole process of the change may be followed in him. "Tom Jones" and "Amelia" still rank as masterpieces, but who reads "The Modern Husband," or "Miss Lucy in Town," or "Love in Several Masques," or any other of Fielding's plays? How many even know that he wrote any plays? Mr. Shaw attributes Fielding's change of base to the government censorship. He writes:

"In 1737 Henry Fielding, the greatest practising dramatist, with the single exception of Shakspere, produced by England between the Middle Ages and the nineteenth century, devoted his genius to the task of exposing and destroying parliamentary corruption. . . . Walpole . . . promptly gagged the stage by a censorship which is in full force at the present moment [1898]. Fielding, driven out of the trade of Molière and Aristophanes, took to that of Cervantes; and since then, the English novel has been one of the glories of literature, whilst the English drama has been its disgrace."

But Mr. Shaw's explanation fails to explain, and his estimate of Fielding's talent for drama is too high. With the exception of "Tom Thumb," his plays are very dull, and it is doubtful whether, given the freest hand, he would ever have become a great dramatist. It was not Walpole but the *Zeitgeist* that was responsible for his failure in one literary form and his triumph in another. The clock had run down, and though Goldsmith

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and Sheridan wound it up once more towards the end of the century, it only went for an hour or so. It is usual to refer to their comedy group as the last flare of the literary drama in England before its final extinction.

In the appendix to Clement Scott's "The Drama of Yesterday and To-day" there is given, by way of supplement to Genest, a list of the new plays put on at London theatres between 1830 and 1900. They number about twenty-four hundred; and—until we reach the last decade of the century—it would be hard to pick out a dozen of them which have become a part of English literature: which any one would think of reading for pleasure or profit, as one reads, say, the plays of Marlowe or Fletcher or Congreve. Of course, many of the pieces on the list are of non-literary kinds — burlesques, vaudevilles, operas and the like. Then there is a large body of translations and adaptations from the foreign drama, more especially from the French of Scribe, Sardou, Dumas, *père et fils,* d'Hennery, Labiche, Goudinet, Meilhac and Halévy, Ohnet and many others. Next to the French theatre, the most abundant feeder of our modern stage has been contemporary fiction. Nowadays, every successful novel is immediately dramatized. This has been the case, more or less, for three-quarters of a century. The Waverley Novels were dramatized in their time, and Dickens's stories in theirs, and there are a plenty of dramatized novels on Scott's catalogue. But the practice has greatly increased of recent years. Now, for some reason, a dramatized novel seldom means a good play; that is to say, permanently good, though it may act fairly well for a season. One does not care to *read* the stage version of "Vanity Fair," known as "Becky Sharp," any more than one would care to read "The School for Scandal" diluted into a novel. The dramatist conceives and moulds his theme otherwise than the novelist. "Playwriting," says Walter Scott, "is the art of forming situations." To be sure, Shakespeare took plots from Italian "novels," so called; that is, short romantic tales like Boccaccio's or Bandello's. But he took only the bare outline, and altered freely. The modern novel is a far more elaborate thing. In it, not only incident and character, but a great part of the dialogue is already done to hand.

Glancing over Clement Scott's list, old playgoers will find their memories somewhat pathetically stirred by forgotten fash-

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ions and schools. There are Planché's extravaganzas, and later Dion Boucicault's versatilities—"classical" comedies like "London Assurance," sentimental Irish melodramas—"The Shaughraun," "The Colleen Bawn"—and popular favorites, such as "Rip Van Winkle"; the equally versatile Tom Taylor, with his "Our American Cousin," "The Ticket-of-Leave Man," etc.; Burnand's multifarious *facetiæ;* the Cockney vulgarities of that very prolific Mr. H. J. Byron; and, in the late sixties, Robertson's "cup-and-saucer" comedies—"Ours," "Caste," "Society," "School." Three thousand representations of these fashionable comedies were given inside of twenty years. How gay, how brilliant, even, the dialogue seemed to us in those good old days! But take up the text of one of Tom Robertson's plays now and try to read it. What has become of the sparkle? Does any one recall the famous "Ours" gallop that we used to dance to *consule Planco? Eheu fugaces!*

The playwriters whom I have named, and others whom I might have named, their contemporaries, were the Clyde Fitches, Augustus Thomases and George Ades of their generation. They provided a fair article of entertainment for the public of their time, but they added nothing to literature. The poverty of the English stage, during these late centuries, in work of real substance and value, is the more striking because there has been no dearth of genius in other departments. There have been great English poets, novelists, humorists, essayists, critics, historians. Moreover, the literary drama has flourished in other countries. France has never lacked accomplished artists in this kind: from Voltaire to Victor Hugo, from Hugo to Rostand, talent always, and genius not unfrequently, have been at the service of the French theatres. In Germany—with some breaks—the case has been the same. From Lessing and Goethe and Schiller down to our own contemporaries, to Hauptmann, Sudermann and Halbe, Germany has seldom been without worthy dramatists. Both the Germans and the French have taken the theatre seriously. Their actors have been carefully trained, their audiences intelligently critical, their playhouses in part maintained by government subventions, as institutions importantly related to the national life.

It is not that English men of letters have been unwilling to contribute to the stage. On the contrary, they have shown an eager, although mostly ineffectual, ambition for dramatic honors.

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In the eighteenth century it was well-nigh the rule that a successful writer should try his hand at a play. Addison did so, and Steele, Pope, Gay, Fielding, Johnson, Goldsmith, Smollett, Thomson, Mason, Mallet, Chatterton and many others who had no natural turn for it, and would not think of such a thing now. In the nineteenth century the tradition had lost much of its force: still, we find Scott, Coleridge, Byron, Shelley, Tennyson, Thackeray, Browning, Matthew Arnold, Swinburne, all using the dramatic form, and some of them attempting the stage. Charles Lamb, one of the most ardent of playgoers and best of dramatic critics, was greatly chagrined by the failure of his farce, "Mr. H——." Dickens was a good actor in private theatricals, and was intensely concerned with the theatre and the theatrical fortunes of his own dramatized novels. So was Charles Reade, who collaborated with Tom Taylor in a number of plays, and whose theatre-piece, "Masks and Faces," was the original of his novelette, "Peg Woffington"—*vice versa* the usual case. More recently we have seen Stevenson and Henley collaborating in three plays, "Deacon Brodie" and "Beau Austin," performed at London and Montreal in 1884-87, and "Admiral Guinea," shown at the Haymarket in 1890; the first and third, low-life melodrama and broad comedy, of some vigor but no great importance; the second, an unusually good eighteenth-century society play. Most certainly these experiments do not rank with Stevenson's romances or Henley's poems. Another curious illustration of the attraction of the dramatic form for the literary mind is Thomas Hardy's "The Dynasts" (1904), a drama of the Napoleonic wars, projected in nineteen acts, with choruses of spirits and personified abstractions; a sort of reversion to the class of morality and chronicle play exemplified in Bale's "King John." Mr. Hardy is perhaps the foremost living English novelist, but "The Dynasts" is a dramatic monster, and, happily, a torso. The preface confesses that the abortion is a "panoramic show" intended for "mental performance" only, and suggests an apology for closet drama by inquiring whether "mental performance alone may not eventually be the fate of all drama other than that of contemporary or frivolous life."

Mr. Henry James, too, has tempted the stage, teased, yet fascinated, by the "insufferable little art"; and the result is a dramatized version of "Daisy Miller," and two volumes of "The-

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atricals": "Tenants" and "Disengaged" (1894); "The Album" and "The Reprobate" (1895). These last were written with a view to their being played at country theatres (an opportunity having seemingly presented itself), but they never got so far. In reading them, one feels that a single rehearsal would have decided their chances. Mr. James, in the preface to the printed plays, treats his failure with humorous resignation. He complains of "the hard meagreness inherent in the theatrical form," and of his own conscientious effort to avoid supersubtlety and to cultivate an "anxious simplicity" and a "deadly directness"—to write "something elaborately plain." It was to be expected that Mr. James's habit of refined analysis would prove but a poor preparation for acted drama; and that his singular coldness or shyness or reticence would handicap him fatally in emotional crises. Whenever he is led squarely up to such, he bolts. Innuendo is not the language of passion. In vain he cries: "See me being popular: observe this play to the gallery." The failure is so complete as to have the finality of a demonstration.

What was less to be expected is the odd way in which this artist drops realism for melodrama and farce when he exchanges fiction for playwriting. Sir Ralph Damant, in "The Album," is a farce or "humor" character in the Jonsonian sense, his particular obsession being a fixed idea that all the women in the play want to marry him. In "Disengaged," Mrs. Wigmore, a campaigner with a trained daughter, is another farce character; and there are iterations of phrase and catchwords here and elsewhere, as in Dickens's or Jonson's humorists. In "The Reprobate," Paul Doubleday and Pitt Brunt, M.P., have the accentuated contrast of the Surface brothers. In "The Album," that innocent old stage trick is played again, whereby some article—a lace handkerchief, a scrap of paper, a necklace, or what not—is made the plot centre. In "Daisy Miller"—dramatized version—the famous little masterpiece is spoiled by the substitution of a conventional happy ending and the introduction of a blackmailing villain. All this insinuates a doubt as to the reality of a realism which turns into improbability and artificiality merely by a change in the method of presentation. But the doubt is unfair. No *reductio ad absurdum* has occurred, but simply another instance of the law that every art has its own method, and that the method of the novel is not that of the play. Of course, there are

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clever things in the dialogue of these three-act comedies, for Mr. James is always Mr. James. But the only one of them that comes near to being a practicable theatre piece is "Tenants," which has a good plot founded on a French story.

The paralysis of the literary drama, then, has not been due to the indifference of the literary class. Perhaps it is time thrown away to seek for its cause. The fact is that, for one reason or another, England has lost the dramatic habit.

HENRY A. BEERS.

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THE POST-ROADS POWER OF CONGRESS: AN HISTORICAL VIEW.

BY J. WALTER LORD.

DURING the eight years in which this nation pursued its precarious existence under the Articles of Confederation, prepared, as these articles had been, without previous experience as to the necessities of a national government and without any considerable deliberation, the one thing which deeply impressed itself upon the statesmen of the period, was the vital necessity to the integrity of a national government of vesting in that government a power over commerce between the States, as well as with foreign nations. The Articles of Confederation made no provision for such power, and the indications pointing to a disposition on the part of the States to pursue independent systems of commercial policies, thus creating distinctions and preferences which would lead inevitably to discontent and disunion, made the nationalization of the commerce power one of the principal reasons—in the opinion of many, indeed, the prime cause—for the establishment of the Constitution. For more than a century, the power of Congress "to regulate commerce among the several States" has been the subject of judicial interpretation by the Supreme Court more frequently than any other clause in the Constitution; it has been the justification and support for many forms of legislation by Congress; and, principally because of its manifest purpose to provide for the exigencies which were not met by the Articles of Confederation, has been construed to be a power of remarkable latitude, acknowledging no limitations over the subject-matter to which it relates.

In marked contrast to this is the power vested in Congress "to establish post-offices and post-roads"; a power which has received hardly any judicial interpretation; a power which has rarely been

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exercised, and then only in such a mild and innocuous manner that it has given rise to no State opposition. This power, thus lying virtually dormant for over a century, is now invoked, though by suggestion merely, to accord to Congress a control over the railways of this country not only with respect to subjects which are national in their character, but also with respect to subjects which lie within the scope of the internal administration of State affairs—a jurisdiction over intrastate commerce as well as over interstate commerce. The mere statement of this object is sufficient to suggest a careful examination of the post-roads clause, in the light of its origin and of its development during more than a century of our political history.

As in the case of the *commerce* clause, the nature and purpose of the *post-roads* clause can be discovered in some degree by recurring to the proceedings which led up to the adoption of the Constitution, and by considering the conditions which prevailed at the time. The Articles of Confederation provided that Congress "shall have the power of establishing and regulating post-offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of said office." The first draft of a new Constitution submitted to the Federal Convention was the one submitted on May 29th, 1787, by Charles Pinkney. The only record of this draft, supposed by many to be imperfect, makes provision, in the 8th section, for the power "to establish post-offices" and the power "to establish post and military roads." In his speech presenting the draft, Pinkney says that the 8th section differs from the Articles of Confederation in this respect only, in that it gives "the Federal Government a power not only to exact as much postage as will bear the expense of the office, but also for the purpose of raising revenue." The inference to be drawn seems to be that the power respecting "post and military roads" was not in his draft, or, if included, was not of sufficient importance to call for comment or explanation. When the Committee on Detail, who were charged with the duty of preparing a draft for discussion, reported on August 6th, the postal power was expressed in the simple clause "to establish post-offices." On August 16th, when the discussion reached this part of the new draft, a motion was made by Gerry to add the words "and post-roads" after the word "post-offices," which

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was passed by a vote of six to five. There is no record of any discussion of the reasons why five States opposed this motion, nor is there anything in the geographical location of these States which would indicate a substantial ground for such opposition. The fact that a considerable amount of other business was transacted on the day in question, leads one to believe that the opposition pertained to form, rather than to any vital question as to the extent of power. On August 18th, twenty propositions involving additional powers were submitted by Madison and Pinkney, and referred to the Committee on Detail. One of these was the power "to regulate stages on the post-roads." On the same day, Gerry moved the additional power "to provide for stages on the post-roads" which was also referred to the Committee. These two propositions would seem to indicate an idea in the minds of their sponsors, and an assent to it on the part of the whole Convention (there apparently having been no discussion), that the power as already adopted "to establish post-offices and post-roads" was not to be one of a very comprehensive character. This seems to have been the last word upon the subject in the Convention; and the Committee on Detail, in its report on September 4th, recommended the adoption of certain of the twenty additional powers, making no reference to the propositions in question. During the many lengthy debates in the Conventions of the various States upon the question of the ratification of the Constitution, although nearly every other power received extensive consideration, the *post-roads* clause seems to have been ignored, except for the single instance of a motion by a Mr. Jones in the New York Convention to the effect that "the power of Congress to establish post-offices and post-roads is not to be construed to extend to the laying out, making, altering or repairing highways in any State *without the consent* of the legislature of such State." Two other constructions were made *dum fervet opus,* so to speak, and of a considerable weight was the one by Mr. Gerry, who stated in Congress on December 6th, 1791, that the power to establish post-roads "cannot possibly mean anything else but to point out what roads the post shall follow"; the other was by Mr. Madison, who in No. 42 of the "Federalist" says: "The power of establishing post-roads must, in every view, be a *harmless* power, and may, perhaps, by judicious management, become productive of great public conveniency. Nothing which tends to *facilitate* the intercourse

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between the States can be deemed unworthy of the public care."

In so far, therefore, as we are able to form any opinion from the records of the times, the conclusion is well-nigh irresistible that the founders of our Government never attached grave importance to the post-roads power; never intended it to be one of considerable extent; and certainly never intended it to be an instrument of national encroachment upon the internal affairs of the States. In comparison with the commerce power, it pales into insignificance. The most that can be said of it at the present stage of our examination is, that it was designed to preserve the integrity of the postal service, and as ancillary, perhaps, to the *commerce* clause, to *facilitate* the transmission of intelligence between the States.

But the discussion thus far has taken no account of the conditions antedating the adoption of the Constitution. Do these in any way alter the interpretation thus imputed to it? In the early stages of our Government, the only roads for the passage of mails were highways owned by the various States. The function of carrying the mails was, however, confided to the National Government by virtue of the post-office clause in the Articles of Confederation. Naturally, no opposition or complaint was put forward by any of the States on account of the use made of its highways for this purpose, as the Government used the highways in common with other persons and on similar terms. But, whilst no positive obstruction was liable to occur, the possibility of the States' highways becoming unsuitable for proper despatch in the postal service, through failure of the States to keep them up to a proper standard of efficiency, must have been apprehended, and some specific provision that would enable the National Government to act in such an emergency must have been thought to be advisable. Considering the circumstances in which it was adopted, it seems reasonable to suppose that it was this notion, and this alone, which accounts for the clause giving Congress the power "to establish post-roads." And this hypothesis seems to agree with the view of the Kentucky Supreme Court* to the effect that it is a "power to make roads, whenever the unfitness or unreasonableness of State policy may render such a course expedient." This is a very illuminating opinion, and, with the exception of

* In Dickey *vs.* Turnpike Co. (7 Dana 113).

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Cleveland R. Co. *vs* Franklin Canal Co. (1 Pitts Law, J. 142), where the Court holds that post-roads may not be constructed through a State without its consent, is believed by the writer to contain the only discussion of the extent of the power in question.*

Until 1806, Congress exercised this power only to the extent of designating what State roads should be post-roads. In that year, the Cumberland Road Act was passed, the Act making provision for obtaining the consent of the States whose territories the road was to traverse. Minor road Acts were also passed at this time. These, however, did not provide for obtaining the consent of the States to be affected. Discussion on the subject was not provoked until some ten years afterwards, when the question of internal improvements became a burning issue. Madison and Monroe then doubted the power of Congress to "construct" roads with or without the consent of the States to be affected, as had Jefferson previously; but they recognized the efficacy of this policy and suggested a constitutional amendment that would legalize it. In Congress opinion on the question was closely divided, but the views of Clay and Calhoun that the power was not merely "adoptive," but "original" and "creative"—that the word "establish" meant to "construct" as well as to "designate"—finally prevailed, and a policy of construction of post-roads was inaugurated. The question of obtaining consent of the States was, at that time, of no serious moment, as the States affected by the scheme were, for the most part, clamoring for these roads, and as to some of them there were provisions in the Acts admitting them into the Union from which such consent could be fairly implied. It seems, however, to have been the settled opinion, even of the latitudinarians, that Congress could not construct roads through the territory of a State without having first obtained its consent.

The next and last class of legislation partaking in part of the exercise of this power is the Pacific Railways Acts and the Telegraph Act. In the early sixties, the Federal Government entered upon a policy of aiding in the construction of railroads connecting the Mississippi Valley with the Pacific Coast, the intervening territory consisting at that time almost entirely of the public domain. The Central Pacific R. R. Co. had been incorporated

*** The reader is also referred to the case of U. S. *vs.* Kochersperger (1 Cad. Cas.), where the history of the postal service is gone into very thoroughly.**

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in 1861 by the State of California to build as far as the Eastern boundary of that State. In 1862, Congress incorporated the Union Pacific R. R. Co. and authorized it to construct a railway from a point in the territory of Nebraska to the western boundary of the territory of Nevada, to connect at the latter point with the Central Pacific and, if necessary to effect such a junction, to continue its construction through California "with the consent of said State"; the Act providing also for obtaining the consent of any other States through which the line might pass. The Act also authorized certain existing Companies to construct lines and connect with the Union Pacific; but as to one of these, the Kansas Pacific R. R. Co., no provision was made for obtaining State consent. In 1865, however, the legislature of Missouri gave its consent, the Company in the mean time having constructed part of its road in the territory of that State, apparently upon the assumption that the authority bestowed upon it by the Act of Congress was derived from the power to "regulate commerce," and that State consent was therefore unnecessary. The other Congressional railway incorporations following within the next four years do not consistently embody the principle of the necessity of State consent, possibly because of the opinion that these Acts were referable to the *commerce* power rather than to the *post-roads* power. The Telegraph Act, passed in 1866, authorized any telegraph company to construct and operate lines of telegraph over any portion of the public domain and along any post-roads, but it contained no provision for obtaining State consent. This, it is believed, is the latest exercise of the *post-roads* power in its creative sense.

Having thus shown the genesis of the power in question, and having traced its development in the legislative branch of the National Government, we observe two things: first, that it was the conviction of such members of the Federal Convention and other statesmen of that time, of whose opinions on the point there are any records, that it was a *designatory* power; and, secondly, that it subsequently came by practical construction to be regarded as a *creative* power, the exercise of which in that respect was at first believed to be dependent upon the consent of the States, and, later, not to be dependent upon such consent. Concerning this question of consent, it must appear upon a most superficial examination that, if a *creative* character is to be ascribed to it, the

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efficiency of this power would be vitally impaired if its exercise could be wholly prevented by the caprice of a State. But, on the other hand, having full regard to its origin and the conditions under which it has received its practical construction, can it be fairly said that the National Government may exercise it within a State's territory in any manner it sees fit? Is not the correct view the one that the doctrine of State consent is to be qualified rather than eliminated?

In approaching this question let us, in order to give the greatest necessary effect to the *post-roads* power, assume that the *commerce* power never existed. Let us, then, suppose the case of a State with several railways in its territory connected with railways running through other States and operating under agreements for interchange of traffic with the latter, but, nevertheless, doing also a domestic business and operating under charters from the State in question, either original or in the nature of enabling Acts. Could the Federal Government, through a corporation of its own creation, in virtue of the *post-roads* power, take over these railroads by the exercise of eminent domain, against the wishes of the State? In giving consideration to this proposition, regard must be had to the essential nature of a railroad. A railroad chartered by a State is the instrument and agent of that sovereignty in discharging the public duty of transportation within its limits. In respect of transportation a State's power is supreme, and it is its duty to perform this function by highways, railroads or other approved methods. Instead, however, of undertaking the performance itself, it acts through public service corporations. But, though acting thus by delegation, it retains its sovereign interest in the highway, railway or waterway, as the case may be, to the same extent as in other public works directly owned and operated by it. To concede to Congress a power to condemn and take over the railways chartered by a State is not, as upon first impression it might seem, to concede to it the power to take *private* property upon making compensation, but it is to concede to it the power to assume ownership and control of the instruments of State sovereignty. And if, under the post-roads clause, this power be once asserted and sustained, it is not perceived where any limit could be logically placed upon its exercise. If Congress might thus take over a State's railways, by virtue of the power "to establish post-roads," it may seem at first blush

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a fantastic, but it is none the less a logical conclusion that Congress could condemn a City-hall or even a State-house under its power "to establish post-offices."

A different proposition, however, might present itself were the National Government to authorize *de novo* the construction of a railway through the territory of a State. There might be some reason for denominating this a legitimate exercise of the *post-roads* power, even in spite of State opposition. It might be true that practical necessities attending such an enterprise would require condemnation of part of a State's railroad for the purpose of crossings; but this, in practice and in principle as well, is an entirely different thing from taking over the whole or any substantial portion of a State's instrument of internal administration.

It is believed that the only Supreme Court decision which gives even a slender support—and that, too, in a most indirect way—to the proposition that the Federal Government could acquire a proprietary interest in a State railroad, as in the first hypothetical instance, is the Pensacola Telegraph case, in which the Telegraph Act of 1866 is construed. In this case the State of Florida, having granted to the Pensacola Telegraph Co. a monopoly in certain of its territory, that Company sought to enjoin the Western Union Telegraph Co. from constructing and operating, in pursuance of the Act of 1866, a telegraph line along the line of a railroad traversing the territory to which the monopoly extended, which railroad, though chartered by the State of Florida, had been declared by Congress to be a post-road. The decision of the Court declining an injunction, might be regarded as implying a recognition of the right of Congress to exercise a proprietorship in the bed of the railroad against the consent of the State; that consent being deemed to have been constructively withheld by the original grant of monopoly to the plaintiff Company. But in the recent case of Western Union Telegraph Company *vs.* Pennsylvania R. R. Co. the Court, without discussing the question of Congressional power to grant such authority, held that the right to construct telegraph lines over post-roads, bestowed upon telegraph companies by the Act of 1866, did not imply the right of eminent domain.

A careful examination, however, of the Pensacola case, as well as of the other decisions ostensibly involving the *post-roads* power in its creative sense, will show that the actions of Con-

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gress are attributed rather to the *commerce* power. In the Pensacola case, importance is given to the considerations that the transmission of intelligence by means of the telegraph is commerce, and that the State of Florida could not, without thwarting the legitimate exercise of the Federal commerce power, exclude from its limits a corporation engaged in this business when properly authorized by Congress; and the language of the opinion strongly indicates that these form the basis of the decision. Moreover, in the Pennsylvania Railroad case we find language strongly suggestive of the proposition that the Pensacola decision would extend only to *interstate* telegraphic communications; that is to say, that with respect to telegraphic messages entirely within the State limits, such a monopoly as was intended by the Florida statute would be upheld. In the decisions involving questions relating to the Pacific Railway corporations, the action of Congress has been principally attributed to its *commerce* power, and in the Wheeling Bridge case the legality of the bridge across the Ohio River, declared by Congress to be a post-road, was sustained not on that ground, but on the ground that it was a regulation of interstate commerce.

Beginning with the opinion of Chief-Justice Marshall in the case of Gibbons *vs.* Ogden, practically in the infancy of our national existence under the Constitution, the *commerce* power has been accorded the widest scope; and such a construction not only comports with the purpose of the States in surrendering this power, but with the importance attached to it by the founders of our Government. The exigencies of national affairs, as plainly foreseen in the abstract and since demonstrated in the concrete, require this construction, and a restricted interpretation would have resulted, no doubt, in national derangement, if not in disunion. The subject-matter to which it relates—interstate commerce—though broadened by the development of our civilization, nevertheless imposes limitations upon the exercise of that power that preserve to the States such of those sovereign powers as are requisite to a proper administration of their internal affairs; powers which, both by constitutional right and by practical necessity, ought to be preserved in their integrity. On the other hand, what limitations inherent in the *post-roads* power, if it be construed to vest in the Nation a control over railroads transporting the mails, irrespective of whether their business is, or is not,

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interstate, exist to prevent Congress from imposing strictures upon the exercise of these sovereign State powers? It is conceded that within its legitimate confines the clause will apply to every avenue upon which the mails are carried by merely declaring such avenue to be a post-road. If, therefore, Congress might exercise a control over railroads, might it not exercise a like control over trolley systems, the streets of the cities, the highways of the States, all of which in their primary nature are essentially instruments of State sovereignty? Where would this control stop? It is difficult to perceive. For, under the guise of facilitating the postal service or keeping it up to the highest point of efficiency, there would seem to be no legal barrier to the scope of Congressional action, once the principle is asserted and sustained that Congress might exercise the control which is contemplated. The necessity of any Act which Congress might deem expedient to facilitate the postal service would not be subject to consideration by the Courts, because questions of expediency in legislation belong to the legislative and not to the judicial department of Government.

Is, then, the *post-roads* power to supersede the *commerce* power, as it certainly will if the construction proposed becomes effective? Is a power regarded by the founders of our Government as "in every view a harmless power" and surrendered by the States without question or deliberation, to be substituted for a power regarded by these founders as one vital to the Union and surrendered by some States only after considerable protest? Is a power heretofore rarely exercised, and then, too, always in a guarded manner and with due recognition of the rights of the States, over a century of national existence, to be given a broader scope than one which, during that period, has served to preserve the integrity of the Union, and which, for this purpose, is comprehensive enough to meet all the necessities of the future? The time may be close at hand when these questions will have to be answered.

J. WALTER LORD.

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THE WEST-INDIAN AND AMERICAN NEGRO: A CONTRAST.

BY W. P. LIVINGSTONE.

AMERICANS who visit the West Indies for the first time invariably express surprise at the character of the relations they observe to exist between the whites and the negroes in the British islands. There does not appear to be much antipathy or friction between the two communities, their daily association is marked by friendliness and good humor, while race reprisal and mob law seem to be absolutely unknown. Is it possible, they ask, that a satisfactory solution of the problem which has become so acute and menacing in their own country has been arrived at in these colonies? Why, they say, should the conditions vary to such an extent in regions so closely contiguous and among races of precisely similar character?

Before attempting to answer these questions, it is necessary to emphasize the fact that the negro race is at present in the elementary stage of human evolution, and as impressionable as a child to external influences. The black man always becomes what he is made by his environment and the higher forces that press upon him. To realize the truth of this one has only to notice the variations in type which prevail throughout the West Indies. In the British islands the colored inhabitant has gradually become British in thought and habit; in Haiti he is a black Frenchman; in Cuba he has been moulded into a Spaniard. On the cosmopolitan Isthmus of Panama, one can often tell at a glance whence a negro worker has come, and on this being determined his mental and social qualities can be estimated with a fair degree of accuracy. In what way, then, do the conditions which govern him in the United States vary from those which have brought about the results we see in the West Indies?

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One of the chief, though not the most potent, of the factors in the situation is the racial nomenclature adopted. In the British West Indies, the dark-skinned population is graded into two distinct classes, the "colored" section of mixed parentage and the negroes of pure blood, the former being considered as on a higher racial plane than the latter. The same rule applies in Haiti and Spanish-American countries possessing similar race elements. Such a system naturally tends towards the separation of the two types, the creation of color-caste and the development of mutual jealousy and distrust. Whatever one may think of these results, they have the effect of weakening the power of combination among the members of the darker race, and of strengthening the solidarity and supremacy of the whites.

In America, on the other hand, there is no such differentiation. All who are connected by blood with the African race are designated "negroes," the term being applied even to persons who are, to all appearance, white in skin, and who are practically white in thought and temperament. Between these and the whites lies an impassable gulf: they are absolutely debarred from all friendly association with the people to whom they feel they have the greatest affinity. They and their children, though whiter still, are forced to take their place everywhere in black America as individuals belonging to an inferior and degraded race. Although resenting a classification which they consider illogical and unnatural, they have never been given any choice in the matter, and they have, at last, come to acquiesce in the arrangement. What is the result? It is leading to the unification of all Afro-Americans as no personal inclination or mutual persuasion could have done. The "colored" class, which contains the most intelligent and ambitious men of the race, has deliberately thrown in its lot with the black, and set itself to the task of educating and training them for the great struggle which, they believe, is to come. The system in the West Indies, more tolerant, is less dangerous to social and racial integrity.

It is not to be supposed, however, that racial feeling is absent in the West Indies. One does not mean race hatred, but that natural antipathy which regulates the relations of all widely separarated people, the sentinel which keeps watch and ward over the purity of highly developed races. This principle governs the attitude of all classes. It is recognized that the white and the

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black are essentially different in nature: that each has his own life to live and his own destiny to work out, independently, though not apart from one another, in the same way as master and servant, cultured and illiterate, mingle in an ordinary white community. The whites regard the negro as a primitive being, incapable as yet of standing alone, and adopt the attitude of trainers and teachers: the negroes are conscious of their inferiority and willingly fall into the position of learners.

Hence the lack of visible antagonism in their daily contact. They use the same railroad and street-cars and the same churches and schools, and "colored" men occupy most of the subordinate, and some of the higher, positions in the public service. The constables who maintain order throughout the community are all black or colored. Despite this close and constant contact at all points in the civil life, it is seldom that one hears of any conflict due entirely to the clash of racial prejudices. Yet keen observers are always able to detect a certain reserve behind the easy attitude assumed—a certain line of demarcation drawn instinctively by the self-consciousness of each race. Intimate relations do not, as a rule, exist. Intermarriage is of comparatively infrequent occurrence: it is chiefly confined to the fairer members of the "colored" class and rarely takes place between pure black and pure white.

Holding unassailed the position of racial superiors and masters in their own house, the British carry out the policy of training up the negroes for whatever position in the future they may be able to take by granting them a certain measure of political independence. Here, also, tolerance has proved the truest wisdom. The qualifications for the franchise are low enough to embrace all self-respecting and industrious citizens; but, as a matter of fact, very few take advantage of the benefit of going to the polls, though voting is absolutely unfettered and there is no intimidation. White men or lightly colored men are, as a rule, returned to the elective assemblies. In a very few cases negroes have been elected, but this has been due either to the fact that the white candidate has not commended himself to the general electorate or to the absence of such a candidate. So little interest is manifested in the elections that, in a recent case, a constituency remained unrepresented for some years because no one, negro or white, could be induced to come forward. Wher-

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ever a popular white man can be found, the negroes prefer him to one of their own race. So far, therefore, no harm has come from the concession of the vote. Having obtained it, they do not use it and are satisfied with the altruistic spirit and work of the governing race. The truth is that the negroes distrust their own power of collective action and prefer autocratic rule, so long as it is just and leaves them their freedom. The governments of negro republics, or republics with a large African element in the population, are usually dictatorships.

Very much the same feeling prevails among the negroes in the United States, their experiences having taught them the value of a centralized government, a beneficent despotism. When they plumped for President Roosevelt, it was the man, not the Republican party, for whom they voted. How, then, are the actual conditions so different from those in the West Indies? We have seen that the negro is there regarded as a ward, an inferior type, but capable of development, who has to be trained up for responsible citizenship. But in the United States he is legally equal, in all respects, to the white man. The Constitution has obliterated the color line, has placed the negro on a level with the higher race and has guaranteed him the enjoyment of the same privileges. It is an extraordinary policy, in line neither with natural law nor with the dictates of experience and common sense; and it is not surprising that the whites who live alongside of the negroes resolutely decline to accept the situation. On the other hand, one cannot blame the negroes, who are, it must be remembered, supported by a considerable body of white opinion in the North. They are simply claiming their constitutional rights; and, so long as these remain to them, they will continue to press for recognition and equal treatment. All who have the slenderest acquaintance with the philosophy of the negro question know, however, the inevitable result of such a situation. It means just what one sees in black America, the steady growth of passionate prejudice and hostility, culminating at frequent intervals in explosions of lawlessness that startle and shock the world. In the North, side by side with a general altruistic sentiment, there is a quiet but growing movement adverse to the social and economic advancement of the negro; in the Middle States, there is a stricter social ostracism and an active and open opposition to his political ascendency, and in the South, along

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with an uncompromising hostility to his social and political progress, there is a strong disposition to restrict his industrial development and to relegate him permanently to the position of a servile worker. This is a penalty he is paying for a privilege he possesses only in name. It would be perfectly just to say that the colored people of America are being sacrificed on the altar of the Constitution.

The next point of difference arises out of the conditions just mentioned. In the West Indies, with the status of the two peoples clearly defined, with political and economic freedom, with absolute justice administered in the courts, there is a complete absence of racial crime. The law is sure and inflexible, and punishment automatically follows the offence, be the delinquent white or black. It is not fear of consequences, however, which restrains the whites from resorting to violence, so much as the loss of self-respect it would involve. One does not wreak vengeance on a child. The sense of race superiority, of wardship, has the effect of making the whites rise above petty ebullitions of jealousy and hostility where the blacks are concerned. And, on the other hand, the innate respect for the whites, which nothing has so far tended to diminish, makes the negroes peculiarly pacific. Throughout the West Indies, there is no haunting dread of the negro, no necessity to go about armed or to safeguard the sanctity of one's home. The idea of protection against possible outrage never enters the mind of the white residents. One has to think of the circumstances in which they live to appreciate what this means. There are hundreds of white homes scattered throughout the interior districts where the women of the household are constantly being left to themselves for days, and even for weeks, surrounded only by a black community. But no one imagines that these women are in danger from the negroes. A white woman, in fact, can go anywhere alone and will receive nothing but humble deference and courtesy from every black man she meets. It is the occasional low-class white, stranded in the country, whom she has reason to fear.

What the conditions are in the United States are only too well known. The entire South is darkened by the shadow of mutual suspicion and outrage. No white woman cares to walk abroad without escort: every house has its stock of weapons and most persons carry a revolver for self-protection. Mob law, with its

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accompaniments of strange barbarity, is of common occurrence. Social freedom is paralyzed, and in some districts the situation amounts to a reign of terror. All this is due to the false position in which the negroes have been placed, and which has compelled the whites to adopt, often against their will, an attitude of antagonism tempered by neglect. The blacks do not always get justice,—and there is nothing which they resent so keenly as the deprivation of this right. Their mistreatment, in one form or another, has succeeded in alienating them from the white race; they have lost all their reverence for it; and there is no check upon the development of the baser elements in their nature.

The object here is not to suggest remedies, but to make a comparison from which the reader may draw his own conclusions. It is necessary, however, to point out that the position of the white in America is more difficult in some respects than that of the white in the West Indies. That there is less hostility to the blacks in the latter sphere is not to be attributed altogether to the higher ethical principles dominating the actions of the British. Much is due to geographical conditions. The West-Indian negroes are far distant from the main body of British whites, and neither comes into direct contact and competition with the other. Compared with the great masses of colored inhabitants, the white residents in the islands are a mere handful. The former do not claim equality, and they accept whatever social honor the whites voluntarily grant them. Fundamental race antipathy exists there as elsewhere, but it is not accompanied by friction, because the political and social contact is not sufficiently close and the climate prevents anything like economic competition. But, if the proportions of the population were equalized and the climate more adapted for white men, as in the United States, we should find a different state of things. Despite altruistic considerations, the whites would probably be much less tolerant of the negro and more averse to his social advancement. The development of the British Empire has already furnished minor illustrations of what happens in such circumstances; and the situation now being produced in South Africa is likely to demonstrate, on a larger scale and in a more startling way, the tragic character of race contact and conflict even under more favorable conditions than those which prevail in the United States.

W. P. LIVINGSTONE.

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SHIFTING THE BURDEN—COMPENSATION FOR INJURIES.

BY A. MAURICE LOW.

In his latest speech at Jamestown, President Roosevelt advocated legislation by which a working-man injured in the course of his employment shall be compensated by his employer. This, in a few words, is the substance of the President's deliverance. Like all of Mr. Roosevelt's utterances, it has been severely condemned and with equal vigor commended. He has been accused of having enunciated "an entirely new and radical doctrine," of having advocated "a new kind of paternalism calculated to have a deadening effect upon the sense of individuality," of having advanced an argument "that smacks of socialism," of having given expression to views that are "demoralizing and degenerating to the very theory of our Constitution." Censure and praise are equally extreme. Mr. Roosevelt has made no discovery, he has not even elaborated an old theory; whether his doctrine is radical will depend upon the point of view. *En passant,* it is interesting to note that in political terminology the word "radical" means one thing in England and quite another thing in the United States; and what is "radical" in America is simply "progressive conservatism" in England. Every foreigner who has studied the United States sociologically is always amazed at the paradox of its conservatism. He is led to expect that this country will be the world's laboratory for experimenting in social legislation, that every theory will be tested to demonstrate its truth, and that the United States will lead in social legislation. On the contrary, he finds that Americans are much more cautious in undertaking social experiments than Europeans. A law placed on the statute-books by the Conservative party in England, as a logical development in the progress of society, is considered by many Americans

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intensely radical, dangerously socialistic, in that it strikes at the very foundation of society and threatens not only the social order, but the destruction of national independence. It is presumed that Mr. Roosevelt is at least reasonably familiar with the official publications of his own Government, and Bulletins No. 32 and 70 of the Department of Labor will show that the scheme he advanced at Jamestown has been in operation in England for the past ten years. Whether it is advisable to borrow legislation of this character from England I shall not now discuss; but, in view of the attention given to the subject by serious-minded men, I propose briefly to explain the reasons which led to the adoption of the Act, the objects sought to be accomplished and its results.

To meet the issue frankly, let it be said at the outset that this is "class legislation" in its most extreme form, but in that it differs not in the least from the whole mass of "Protective Legislation" that for the last half-century has constituted the chief work of lawmakers the world over. By protective legislation the sociologist means those laws designed to protect the laborer, the wage-earning class, the men and women engaged in gainful operations, from the consequences of their own folly or ignorance and the cupidity or indifference of their employers. Laws restricting hours of labor or output, requiring proper sanitation in factories, providing for safety appliances in mines and railways, fencing machinery to safeguard employees, prohibiting the employment of children of tender age—these and all similar laws which we now regard as a matter of course first found their expression in England with the beginning of the factory system, and were acknowledged to be in the interest of a class—a class which the State was morally bound to protect because it was incapable of protecting itself. Space will not permit me to go into this branch of the subject at any length, and a recent bulletin of the Bureau of Labor (No. 70: "A Short History of Labor Legislation in England") traces in concise form the genesis and growth of this legislation; but two things must be emphasized. One is that, having had their inception purely in humanitarianism, it was not until long afterwards that the economic value of these laws was understood, and it took men many years to grasp what is now a truism, that there is a certain limit of physical endurance, and that, when that limit is reached, labor ceases to be profitable. In other words, it is cheaper to work a man

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eight hours a day than it is to work him ten or twelve, because after he has worked eight hours he is mentally and physically fagged out and his work falls below the profitable standard. The other fact, of equal interest, is that at the beginning both employers and employees opposed the laws, the one believing that it would ruin them, and the other, that it was an interference with freedom of contract, and hampered them in the sale of their only commodity, their labor. Both theories have been proved to be fallacious.

The British Workmen's Compensation Act, which came into operation on July 1st, 1898, both destroyed and created—it struck down, in effect, although not in expressed terms—the pernicious common-law doctrine of "common employment," and it laid an obligation upon the employer to succor his employees when in distress. The doctrine of "common employment," which the courts of this country recognize, relieves an employer of liability for an injury caused to a person in his employment if the injury was the result of the negligence of another person also in his employment. Thus, if a man employed by a railway company in New York to couple cars does his work so negligently that, when those cars are uncoupled in Chicago, the employee there must inevitably have his hand crushed, under the common-law doctrine of "common employment" he has no remedy against the railway company, as the man in New York and the man in Chicago are "fellow servants," and each assumes the risk of negligence on the part of the other—a doctrine manifestly unjust. The common law has further protected the employer by the application of the principle of "*volenti non fit injuria.*" If the employer can prove that the employee was injured in the course of his occupation by a risk which it is inferred the workman must have known, the employer is relieved of liability. To succeed in an action at common law for an injury caused by defective plant, it would be necessary to prove that the employer knew, but the workman was ignorant of the defect which caused the injury. A further obstacle to the recovery of damages by a workman in an action at common law is the defense of "contributory negligence"; the law holding that, if the injury was caused through the combined negligence of both parties, the injured person cannot recover. Thus, it might be the duty of a workman to clean a machine in motion, and the owner of the

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machine might not have equipped it with a safety device to prevent accident; yet, although the workman might be maimed for life because of the parsimony or indifference of the employer, it might be easy for him to show negligence on the part of the workman, and under the common law doctrine of contributory negligence the workman could obtain no redress.

It will be seen, therefore, that while, theoretically, the law of England gave a workman protection and compensation when he met with an accident in the course of his occupation, in point of fact he seldom if ever was able to obtain redress. The doctrines of common employment, *volenti non fit injuria* and contributory negligence were ramparts about the employer that the working-man was unable to overthrow. The injustice of this was so apparent that an agitation began for an amendment to the law that would place employer and employee more nearly on an equality. It was not until 1880 that this agitation bore fruit in the passage of the Employer's Liability Act, which makes an employer liable for injury to a person in his employ when the injury is caused by defective plant or machinery or the negligence of persons entrusted with superintendence. But that law really did little to correct the evils it was designed to meet. It was, in the first place, difficult to prove negligence; many accidents are not due to negligence, but are an unavoidable incident arising out of the occupation; and as most employers refused voluntarily to make compensation, the result was costly and uncertain litigation. Speaking generally, it may be said that the working-man was little better off after the passage of the Employer's Liability Act than he was before.

When the Act was found to be unsatisfactory, numerous attempts were made to secure its amendment, which principally took the form of the abolition of the principle of "common employment." In 1893, Mr. Asquith, the Home Secretary, representing the Government of the day, brought in a bill for that purpose, which after passage by the Commons was rejected by the Lords. That bill finally grew into the Workmen's Compensation Act in the form of an amendment moved by Mr. Chamberlain, in 1897, "that no amendment of the law relating to employer's liability will be final or satisfactory which does not provide compensation to workmen for all injuries sustained in the ordinary course of their employment, not caused by their own

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act or default." This is the principle of the law as it now stands. "It is difficult to overrate the boldness or importance of the step then taken by the legislature," is the statement made by a departmental committee appointed by the Secretary of State for Home Affairs in 1903 to inquire into the workings of the law.

It has already been observed that, in the long struggle between humanitarianism and cupidity and criminal indifference, when a finer ethical conception and a wider knowledge of the duties of society induced a small number of men to bring about the passage of protective legislation, that legislation was always opposed both by masters and workmen, because both believed the burden would fall on them. It was so in this case. Prior to the passage of the law, Mr. John Wilson, a member of Parliament and secretary of the Durham Coal Miners' Association, in a circular issued to his Association said, supposing a scheme of compensation adopted, the money will no more come from the employer than "the water we drink comes from the tap or the pipe it flows out of. It may run out of the tap, but it must come from the spring or other source. So the money paid will come from the spring of the employer's wealth—the labor of the workman."

Manufacturers and the employers of labor generally saw in this law, if not their ruin, at least a very heavy reduction of their profits. They did not agree with Mr. Wilson that the money paid in compensation would "come from the spring of the employer's wealth—the labor of the workman"; on the contrary, they held it would come out of their own pockets. The colliery proprietors, for example, asserted that the proposed law would impose a charge equivalent to three pence per ton on every ton of coal mined, or an annual charge of £2,375,000. When the bill was pending in the House of Commons, Mr. Asquith agreed with Mr. Wilson, and suggested that, inasmuch as a large share of the burden would fall upon wages, the working-men would gain little benefit. Mr. Chamberlain replying to Mr. Asquith said that, admitting the correctness of the argument, "every addition to the cost of manufacture must come out of wages, which, I think, will reduce the argument to an absurdity." In the course of the same debate he said: "We have provided for those who are injured by no fault of their own, but we have gone beyond that, because we have provided for those who have contributed to the accident from which they suffer."

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The law provides that a workman injured in the course of his occupation, when that injury is not due to any violation of the rules and regulations established and approved by the proper authorities for the conduct of the business, whether or not that accident was due to the default or negligence of the employer, shall be compensated by him as follows: In case death results from the injury and the workman leaves dependents wholly dependent upon his earnings, a sum equal to three years' wages, or £150, whichever sum is larger, but in no case to exceed £300; in case of partial dependence, a sum not exceeding the amount payable for total dependency as may be agreed upon or determined; in case of total incapacity, a weekly payment during the entire time of incapacity equivalent to one-half the weekly earnings, but not to exceed one pound. Practically, a working-man totally disabled and unable to earn his living in his regular trade is given a pension for life on half wages, except in those cases where his wages exceeded two pounds a week, as the maximum pension is limited to one pound, but the employer has the option to commute the pension by the payment of a lump sum. In the case of partial incapacity, a sum not exceeding one-half the wages shall be paid during the period of incapacity, but the amount the workman is able to earn may be regarded as a set-off and the employer's contribution reduced accordingly. The law works automatically.

Having thus explained the motives that induced the legislature to enact the law, and the objects sought to be attained, we must now consider three aspects of the subject, namely: Is it the duty of the State to provide for those unable to provide for themselves; and what are the economic and sociologic effects of State interference and assistance?

The first question—the duty of the State to furnish assistance—cannot be answered dogmatically, because the answer to it will be determined by the conception every person has of the proper relation existing between the State, representing society as a whole, and the individual—which is a conception biased by political and other considerations. To those who believe that the State is something more than a "big policeman," and that the State is remiss in its duties when it is content merely to provide prisons and hospitals, the principle exemplified by the Workmen's Compensation Act is logically the proper development of the highest

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form of social duty; to those who hold to the contrary and believe that the best-governed state is the least-governed state, the liability thrown on the employer for compensation to his workmen may well be regarded "a pernicious doctrine." As the question, in this connection, is academic no profitable end can be gained by its discussion at this time. But when we approach the other phase of the question—the effect of the law sociologically and economically—we are on surer ground.

The test of every law is time—the experience which proves whether philosophically the law meets a demand or is merely the unconsidered expression of momentary excitement; and the supreme test of all economic laws is the response to the demands made upon it in a time of a falling market. In other words, an economic law is like a ship whose buoyancy and stability and general seaworthiness can only be proved, not when it lies at anchor, but when it has been buffeted by wind and wave. In a rising market, when the times are good and labor is scarce, every pseudo-economic law justifies itself, as the most unseaworthy craft does in fair weather; but it is only in time of stress that we are able really to discover whether a law is economically sound or an assumption predicated on false principles. The Workmen's Compensation Act has not received such a thorough test as would enable us to speak with conviction as to its economic workings, because since its passage the United Kingdom has enjoyed great prosperity, and in England, as in this country, the demand both for products and labor has fully kept pace with the supply.

Two years after the passage of the law, in 1900, the writer made in England and Scotland a study of its operations for the United States Bureau of Labor; and last year, as an incident to another sociological investigation, he paid some attention to its workings, to ascertain to what extent his conclusions of 1900 should be modified. In the report of that year it was stated:

"During the brief period the law has been in force there has been a demand greater than the output for nearly all forms of manufactured articles, and labor has found steady and remunerative employment at constantly increasing wages. In some trades there has been a scarcity of labor, especially since the outbreak of hostilities in South Africa, which seriously affected the labor market by the withdrawal of men from gainful occupations to join the colors. This fact cannot be too strongly emphasized. Both employers and employees agree that the real

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merits and defects of the law, its advantages and disadvantages, can only be determined when there is a time of stress, when capital cannot find a productive return, and when labor cannot find employment and the wage scale declines."

With the insufficient data then in possession of the writer, it was only possible to reach one conclusion, that the cost of compensation had not been a tax laid upon the working-men in so far as it imposed a charge upon his wages, as wages instead of having decreased since the law came into effect were higher than before its passage; but it must be repeated that not one but many things affect the level of wages. The natural assumption, then, would be that, as compensation had cost the working-man nothing, the full burden had fallen upon the employer, which is an assumption justified only in part. In estimating the cost of production, a manufacturer calculates the cost of raw material, labor, interest on his capital, expense of distribution and factory and office charges, rent, insurance, advertising, etc. Assuming that compensation to workmen is equivalent to five per cent. (this estimate, of course, is purely arbitrary) of the annual wage roll, here is a fixed sum which must come either out of profits or be added to the selling-price. It may often happen, however, that the consumer will not bear the whole cost, as part of it will be taken up in the slack of the chain of industry. From the producer of the raw material to the consumer every article of commerce passes through many hands, every transaction increasing the cost, but also permitting a specific charge incident to production to be widely distributed. But, even if the whole charge fell upon the consumer, which is only another term for the public at large, it would be merely shifting the burden from the shoulders of the individual to the shoulders of many individuals, and the many are better able to bear the burden than the one. Facing facts frankly as they exist, we are forced to recognize that the working-man as a class is financially unable (whether because of improvidence or misfortune, we need not now consider) to bear without outside assistance the strain of illness long continued. Whether the workman goes to a hospital which is maintained by the general taxes of the community, whether he is supported by the contribution of his fellow workmen, whether he is the recipient of charity, it is immaterial in what form the assistance is rendered, the cost falls not on himself, but is assumed by a

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limited number of persons. By the statutory enactment the number of persons is unlimited; their limit is only the number of consumers, and each bears his part in sustaining the burden of his fellow. In the report of the departmental committee to which reference has already been made, the conclusion is reached that, "on the whole, we think, the verdict must be favorable to the Act. In other words, we think that great advantages to the workmen have been obtained without imposing any undue pecuniary burden upon the employers."

We have now to consider the sociological effect of the law, and in that connection an important economic-sociologic phase. Is it for the general advantage of society that a workman shall be pensioned when incapacitated in the line of duty, or is it better for himself individually and for society in the aggregate that, when injured, he shall be cast adrift to shift for himself? Here again the answer will be dictated by the teachings of political philosophy. To the disciples of the Manchester School, who preach the doctrine of *laissez-faire* and whose ideal of the State is a stony-hearted stepmother deaf to the cries and blind to the tears of her unfortunate children, State interference is maudlin sentiment destructive to manhood and independence, but the modern view of the duty of the State is more humane, and is actuated by an intelligent selfishness represented by the formula that what is good for one is best for all. We begin by the recognition of a moral obligation, the acknowledgment that those who, by the accident of nature or even by their own laches, are less fortunate must, in a sense, be taken care of by the more fortunate; but in so doing no prop is withdrawn from them, nothing is done to break down their resistance or initiative. If suffering comes to them, suffering is to be relieved; but no premium is to be placed upon suffering, malingering is not to be rewarded. "It may be that the employer finds some compensation," the report of the departmental committee says, "in the improved relations with his workmen, or in the advantages that result from a clear and definite obligation imposed on all employers engaged in the industry, instead of the more indefinite moral obligations which, previous to the legislation in question, were felt to be binding by good employers, but were neglected by bad."

The working of the law has had one effect which probably

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no one was wise enough to foresee at the time of its passage. It has, without question, made it more difficult for the old and infirm to obtain employment, and these difficulties will increase whenever the labor market is redundant—that is, whenever trade is slack and there are more men seeking employment than there is work for them to perform. The reason for this is obvious. A man whose faculties are dimmed and whose muscles are relaxed, a man past the prime of life, is more liable to meet with an accident in a trade requiring great alertness of eye, hand or step than a younger man; and, with the fear of compensation always before him, the employer will naturally select the man with the greatest percentage of chances in his favor. In the old days, it made no difference. If a man fell from a scaffold and broke his back or his leg, the employer was under no legal obligation to compensate his dependents or care for him during sickness, but now he cannot escape from this obligation, so that, when the labor supply is plentiful, the selective process will be employed and only those most fit will industrially survive. In the 1900 Report to which I have previously referred, I said:

> "This [the discrimination against men beyond a certain age] has been referred to without bitterness, but as a fact, an unfortunate but perhaps unavoidable corollary to the effort made to improve general conditions, which, as a general thing, bring about 'the greatest good for the greatest number,' but incidentally, in the process of adjustment, before its accomplishment entails some suffering on the minority."

The departmental committee was sensibly impressed by this effect of the law. "The evidence has led us to the conclusion," the committee said, "that the Workmen's Compensation Acts have largely increased the difficulties of old men finding and retaining employment. We fear the tendency is for these difficulties to grow."

Admittedly, the law is still an experiment; but it is an experiment that so far has worked well, and employers as well as employed agree that it has served a useful purpose. Experience may prove that, to prevent oppression and to convey the fullest benefits, the law will need to be amended; but one may assert, with due regard for the danger of vaticination before the event, that the Workmen's Compensation Act has been written into the statute-book of England not to be effaced.

A. MAURICE LOW.

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NEW BOOKS REVIEWED.

BY LOUISE COLLIER WILLCOX AND EDWARD PORRITT.

MAXIM GORKI'S "MOTHER."*

WHAT a strange, new world we enter when we open a book of Maxim Gorki's! A new planet and a strange, unheard-of language could hardly be a greater adventure than to turn from our current novel to these stern, sad, disconnected pictures of life, these crowds of people, just emerging from barbarism, half awake, questioning life for its significance with such gravity, such solemn earnestness. One looks over a heap of current novels and one finds a story of impersonation and the threadbare device of an exchange of babies in infancy; another offers a convict escaping from penal servitude and succeeding to a baronetcy; another is a tale of an idle rich young man, who learns to speculate boldly on the stock exchange, makes a lot of money and marries the girl he wants; still another is a tale of a woman who marries the wrong man and finds herself in love with another; the husband disappears and she marries the right man only to be upset by the reappearance of the first husband, who then dies in the nick of time and leaves the happy couple reunited and rejoicing. How little, how personal and how absurd it all seems when one has just closed a great book of living ideals. If one turn to the two most serious novels of the last two years, one finds that one deals with a young girl whose highest striving is to keep up with smart society, and in this attempt she loses money and reputation and kills herself; another shows a young woman fascinated by the pomps and glories of the flesh, in love with a well-nourished, well-dressed body and the security and bravado of worldliness, and from these she turns to a man who has at least won to peace

* "Mother." By Maxim Gorki. New York: D. Appleton & Co.

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with his own soul. As we set Gorki's "Mother" against such themes as these, we do, indeed, seem to enter a new and different circle of existence. Can it be true, that the new and higher form of consciousness, that consciousness which is social and not personal, is to come to us from the least civilized of lands?

Gorki presents us with a manifold scene, with a great number of characters, almost impossible, with their unpronounceable names, to commit to memory, but all living for an ideal, all ready to court danger and death for the ideal, the liberation of the lower classes. "It's the masters who take pleasure in Christ as he groans on the cross. . . . They destroy lives with work. What for? They rob men of their lives. What for, I ask? My master —I lost my life in the textile mill of Nefidov—my master presented one prima donna with a golden wash-basin. Every one of her toilet articles was gold. That basin holds my life-blood, my very life. That's for what my life went! A man killed me with work in order to comfort his mistress with my blood. He bought her a gold wash-basin with my blood." "Man is created in the image of God," said Yefim, smiling. "And that's the use to which they put the image."

Picture after picture of the degradation, the misery, the suffering, of the poor passes before us, and amongst them, gentle, silent almost to dumbness, slowly growing in courage and comprehension, moves the heroine, the mother, young, and beautiful, and winning, and gay? No, she is old even when the story opens. "She was silent and had always lived in anxious expectation of blows. She was tall and somewhat stooping. Her heavy body, broken down with long years of toil and the beatings of her husband, moved about noiselessly and inclined to one side as if she were in constant fear of knocking up against something. Her broad, oval face, wrinkled and puffy, was lighted up by a pair of dark eyes, troubled and melancholy as those of most of the women of the village. On her right eyebrow was a deep scar, which turned the eyebrow up a little; her right ear seemed to be higher than the left, which gave her face the appearance of alarmed listening. Gray locks glistened in her thick, dark hair like the imprints of heavy blows. Altogether she was soft, melancholy and submissive." How strange a heroine for a novel. The description alone is enough to tell us that we are dealing not with a weaver of fine tales and romantic adventures, but with

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a stern psychologist who watches every motion intently, to see the throes that bring a conscious soul to the birth.

"When a man grows scabby," Rybin roughly says, "take him to the bath, give him a thorough cleaning, put clean clothes on him—and he will get well. Isn't it so? And if the heart grows scabby, take its skin off, even if it bleeds, wash it and dress it up all afresh. Isn't it so? How else can you clean the inner man? There now!"

The mother who had lived a dumb, half-awakened existence, her chief concern to ward off beatings, comes slowly to consciousness as she watches her son and grows to know his comrades, all of whom are giving their lives to organizing and instructing the people. "Life altogether is not as it used to be," she says, pathetically. "And the terror is different from the old terror. You feel a pity for everybody and you are alarmed for everybody! And the heart is different. The soul has opened its eyes; it looks on and is sad and glad at the same time. . . . Sometimes at night my thoughts wander off to my past. I think of my youthful strength trampled under foot, of my heart torn and beaten, and I feel sorry for myself and embittered. But for all that I live better now, I see myself more and more, I feel myself more."

It is this that Gorki traces, the soul feeling itself more and more until it lives its life in the lives of others until we begin to foresee a time when people will take delight in one another, when each will be like a star to the other and when each will listen to his fellow as to music. When free men will walk upon earth, and the heart of each shall be purged of envy and greed and life will be one long, glad service to man.

It is in the service to the cause that the mother is killed, shortly after her son has been condemned to exile, she is choked to death by the gend'arme as she stammers, "You poor, sorry creatures."

The writing of this novel is a great gain upon "Foma Gordyeeff"; it is more curt and stern, and yet more keenly alive and has an even greater wealth of detail. In its mastery of detail, in the miraculous way in which the author eliminates himself and looks at life through the eyes of another, it reminds one of that masterpiece "Madame Bovary"; but how different, how many worlds and worlds away does the theme lie.

This is a great and a serious book; it has exquisite description and idealization of nature, and yet it has the flaw which Maxim

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Gorki has himself pointed out in all his work: it does not give us joy. Those who have seen the stern, sad face of this master, still less than forty years old, those who know how deliberately he has laid down his young brave life for this cause and its propaganda, know, too, that all the playtime of art has been denied him, and only great solemnity and exaltation can fit themselves into his sad outcries to humanity.

LOUISE COLLIER WILLCOX.

A BOOK WITH A HISTORY.

WALTER SAVAGE LANDOR'S "COMMENTARY ON THE LIFE AND CHARACTER OF FOX."*

EXCEPT for anecdote concerning the humble origin of the Fox family, which is so gross that it will not admit of reprinting, it cannot be said that Walter Savage Landor's "Commentary on the Life and Character of Charles James Fox," written as far back as 1811, but now for the first time published, adds anything to what is already known of the famous Whig statesman. Yet the disinterment of the solitary surviving copy of the impression that was printed in 1812, but not then published, was abundantly well worth the painstaking labor that Mr. Stephen Wheeler has bestowed upon it; for in its present form the Commentary has both a literary and a political value. On its purely literary side it will make an appeal to admirers of Landor who appreciate his vigorous and unconventional prose; while as regards its political aspects the value of the Commentary lies first in the abundant proof it affords of Landor's sympathy with the United States; and in the second place in its characterization of men and conditions in what was possibly the worst period of modern English political history—in his view of men and political parties in the sombre period in English politics which lies between the American Revolution and the end of the reign of George III.

It is not difficult to understand why John Murray was willing to resort to extreme expedients to get the Commentary off his hands—to prevent it from going out into the world with the Murray imprint. The wonder is that the book ever passed from

* "Charles James Fox, A Commentary on His Life and Character." By Walter Savage Landor. Edited by Stephen Wheeler. London: John Murray. New York: G. P. Putnam's Sons.

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Murray's desk into the printer's hands; for Murray was closely associated with many of the foremost statesmen and politicians of the Tory party, and in 1811 and 1812 Canning, Croker and others of the Tory politicians, who were handy with their pens, were associated with him in the management of the *Quarterly Review,* then, much more than now, the organ of the Tory party and the literary mainstay of British Toryism. It was through the influence of Southey that John Murray, in 1811, published Landor's "Count Julian: A Tragedy"; and in the same year Landor sent his Commentary on Trotter's fulsome Memoirs of Charles James Fox to Murray, without mentioning it to Southey. Murray sent the manuscript to the printers without reading it; and the volume was ready for the booksellers in February, 1812, before its character and the trouble which would surely have attended its wide publication had dawned on Murray. At this stage Murray sent a copy of the book—the copy that has survived in the Earl of Crewe's library and which Mr. Wheeler has used for the present reissue—to Southey, who was soon in correspondence with Landor as to the urgent need of making some changes. "I could not lie down this night with an easy conscience," Southey wrote to Landor, on February 12th, 1812, "if I did not beseech you to suspend the publication till you have cancelled some of the passages." There was, indeed, much in the volume that might cause Murray alarm; but the publisher seems to have objected most strongly to Landor's dedication of the work to Madison, the President of the United States. Landor was unable to appreciate Murray's dread on this score. He regarded his dedication as a very temperate effusion; he reminded Southey that war had not at this time been declared—as a matter of fact, hostilities did not begin until the summer of 1812—and Landor pleaded with Southey that he wished to point out what harm a war between Great Britain and the United States would do to America. "How deplorable," Landor urged, "that free men should contend with the free."

Gifford, who was the editor of the *Quarterly Review,* and as such closely associated with Murray, had read the dedication, and had promptly unburdened himself to Murray with regard to it. "I never," he told Murray, "read so rascally a thing as the Dedication. It is almost too bad for the Eatons and other publishers of mad democratic books. In the pamphlet itself there

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are many clever hits; but there is no taste and little judgment. His attacks on private men are very bad. Those on Mr. C. (Canning) are too stupid to do much harm, or indeed any. The Dedication is the most abject piece of business that I ever read. It shows Landor to have had a most rancorous and malicious heart. Nothing but a rooted hatred of his country could have made him dedicate his Jacobinical book to the most contemptible wretch that ever crept into authority, and whose only recommendation to him is his implacable enmity to his country. I think you might write to Southey; but I would not on any account have you publish such a scoundrel address."

As late as February 21st, Mr. Murray had not acted on Gifford's advice to work through Southey for the suppression of the book; but in a second letter—dated February 21st—Southey advanced a new and remarkable reason against the Dedication to Madison. It was that the President was in the pay of Bonaparte. "The American Government," wrote Southey, "dream of conquering Canada on the one hand and Mexico on the other; and happy would Bonaparte be if he could see them doing his work." Beside the Dedication, in Southey's opinion, the book was full of perilous stuff; for there were passages which were distinctly actionable, or likely, if published, to give Landor cause for regret. By March 12th, 1812, Landor had learned that Murray was disposed to suppress the book, "whether for pay or prejudice," he wrote Southey, "I cannot tell." As for Southey's suspicions about Madison, Landor assured him that he could never believe that the President was in Bonaparte's pay, or that Americans need be paid to resent the indignities and hardships they had suffered under Great Britain's maritime laws. Landor urged further, in this correspondence with Southey, that the orders in council ought to have been revoked; and maintained that war between England and America would be a civil war—"a detestable thing, only to be pardoned when there was some serious and perfidious tyrant to be brought to justice."

Towards the end of February, Murray acted on Gifford's advice and was in communication with Southey as to how he could best relieve himself of the burden and responsibility of the Commentary. He was anxious to hand over the book to some other publisher—into whose hands he was ready to deliver the volumes ready for publication, and with whom he would settle for Landor.

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"This," said Southey, in urging Murray's predicament on Landor, "is purely a matter of feeling and not of fear. He is, on the score of the *Quarterly Review,* under obligations to Canning, and would on that account have refused to publish any personal attack on him. The manuscript he never read; looking forward to the perusal of the book as a pleasure. What he wishes will be no inconvenience to you; and no doubt you will readily assent to it." Even at this late stage, Landor did not see matters in the same light as Southey. So far from regarding the proposed transference to another publisher as no inconvenience to him, Landor threatened to borrow five thousand pounds and start a private printing-press whence could be issued, without the aid or obstruction of publishers, pamphlets which would set the public mind more erect, and throw ministerial factions into the dust.

In the end, however, the book was suppressed by Landor; and the only copy that has survived of the impression of 1812 is the one that Murray sent to Southey. This went into the possession of Monckton Milnes, afterwards Lord Houghton, father of the Earl of Crewe, to whom Mr. Wheeler is indebted for the use which has been made of it in bringing out the present volume. By the suppression of the book in 1812 Landor's contemporaries lost some exceedingly piquant expressions of his views on statesmen and politicians of both parties—for the volume deals by no means exclusively with Fox and the memoirs which were compiled by the sycophant Trotter. Had the Commentary been published in 1812 it would assuredly have been largely drawn upon for the popular literature of the movement for Parliamentary Reform. It could not have failed to be of service to that great and long-retarded movement; for of all writers between the French Revolution and 1832 there was not one who was more dead in earnest for reform than Landor; nor one who had a greater contempt for the Whigs and their attitude towards Reform and all other political movements of a democratic tendency.

The reformers of the period between 1812 and 1832 lost the advantage which would have accrued to their movement from the publication of the Commentary; and both Murray and Landor, by the suppression of the book, saved themselves from numerous suits for libel. Much of what Landor wrote of Fox, Dundas, Grey, Rose and the Grenvilles was not far from the truth. Few English politicians of that era, when the rule of the aristocratic

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families was at about its worst, when, as Landor asserts, members of the House of Commons, who were brothers and sons of noblemen, "sat and rose only for places and pensions," and when "their very seats were commercial," could have stood the tests that are applied to English politicians to-day—tests that make self-seeking and graft exceedingly dangerous if not almost impossible. But public opinion in England in 1812 was not what it is to-day; and it would have fared ill with Landor and his publisher had the Commentary brought them—as it most surely would have done—into the law courts.

The substance of much of what Landor wrote in 1811 has found its way by this time into the histories or the political diaries which have long ago been published. There is, as was said at the outset, little that is new in this disinterred volume. It will be read not for any new light that it throws on English political history, but in order to ascertain Landor's point of view, and for the enjoyment of Landor's prose. Southey could not possibly have had any sympathy with Landor's politics; but for the sake of Landor's prose, his regret was sincere that there seemed to be no middle course, and that the book was to be suppressed. "Your prose," he wrote to Landor, when he was counselling him not to dedicate the book to Madison, and was urging other changes to avoid libel actions, "is as much your own as your poetry. There is a life and vigor in it to which I know no parallel. It has the poignancy of champagne, and the body of English October." Landor's admirers of to-day have lost but little by the long suppression of the book; for no editor who had disinterred the volume of 1811-12 could have given it a better setting—introduction and notes—than Mr. Wheeler.

EDWARD PORRITT.

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WORLD-POLITICS.

LONDON: ST. PETERSBURG.

LONDON, *June, 1907.*

ONE of the pleasantest events of the month in England has been Mark Twain's visit. The veteran author has received, and as I write is still receiving, the most affectionate welcome from all classes of Englishmen that any writer of my times has met with. The King has singled him out for special attentions; his name is a standing head-line in the London journals, which daily entertain their readers with a half column or so of the good things that Mark Twain said or should have said or might be conceived as saying; he has been the guest of honor at a dinner given by the American Ambassador and attended by many of the choicest spirits in English letters, art and journalism; an abundance of private hospitality, far more, indeed, than he could accept, has been offered to him; that most agreeable of Anglo-American institutions, the Pilgrims' Club, has entertained him at luncheon; and Oxford in conferring a degree upon him was never, in the words of an English writer, "more truly representative of the nation than in thus honoring the most distinctive figure in the world of English letters." Mark Twain must by now be as well used to public admiration as any man living, but in the greetings showered upon him in England, there has been a quality of intimate tenderness, a sort of proprietary pride, that cannot but have moved him profoundly. There is that in his writings which draws readers as much to the man as to the author, and it is not merely for his books, but for the spirit and character revealed in them and for all they have heard of his life and its trials and triumphs, that Englishmen love Mark Twain with an ardor very little below that of his own countrymen. For a generation at least he has been to England the supreme

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example of humor in its most piquant, most American form, and the unrivalled guardian, since Charles Dickens died, of the sources of deep, human, elemental laughter. It is possible, indeed, that Englishmen have profited by just the shade of mental difference that separates the two peoples to extract from Mark Twain's humor a more exquisite relish than even the Americans themselves, for whom its flavor can scarcely have the charm of an exotic. It is, at any rate, mainly as a humorist that Mark Twain has taken his place as a popular classic. But you will also find in England a ready and intelligent appreciation of all the other qualities of mind and heart that raise him so far above the level of the mere professional humorist—his masculinity, the idealism that underlies so oddly and acceptably his merry, clear-eyed, half-misanthropical cynicism, his unquenchable faith in women and democracy, the constancy and the vigor of his fight against whatever is pretentious and ignoble, and the abiding sympathy that enables him to read with equal clarity the heart of a harum-scarum American boy and of such a character as Joan of Arc. And if they need, which they do not, any further excuse for acclaiming Mark Twain, Englishmen find it and avow it in two things. One is their knowledge of the financial catastrophe that overtook him when nearly in his sixtieth year, and of the heroic spirit in which that catastrophe was faced. The other is their consciousness that, in honoring Mark Twain, they are honoring the national author *par excellence* of the United States —the man who, both in his writings and in himself, typifies all that is best in the many-sided American spirit, and whom the American people would unanimously pick out as their most characteristic and representative author. Englishmen, in short, have felt urged by a unique combination of impulses to make of Mark Twain's visit an occasion for the display of their national regard for his genius and of their affection for his character; and their homage must, I should imagine, have been peculiarly gratifying both to its recipient and to the American people.

Things are not going very well with the Government. That is, not so much because the Government is a bad one as because it is a Liberal one. The essence of Liberalism is impatience, and no one with any experience of politics will expect three or four hundred men to be impatient with the same things at the same

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time and in the same way. They are far more likely to end in developing an excessive impatience with one another. That has always been the failing and the pitfall of the English Liberals. They are still, as they have been for nearly half a century, a congeries of enthusiastic and ill-regulated groups rather than a united and harmonious confederation. Each section has its own pet measure which it regards as of preeminent importance and the claims of which it is apt to press with all too slight a deference to the general interest of the party. And just now all sections are filled with the utmost reforming vigor. They have come back to power after nearly twenty years in opposition, with a negative mandate to preserve free trade, with a positive mandate to effect certain far-reaching changes in the social structure of the country. They are eager to get to work and "do things." Thus, the Nonconformists want an Education Bill; the Temperance group clamors for an amendment of the Licensing Acts; the Irish Nationalists demand a new Land Act, the establishment of a Catholic University, a measure restoring to their holdings the "wounded heroes of the land war" who are less grandiloquently known as the "evicted tenants," and as much of Home Rule as they can extort from the Government; the Welsh members are set upon the disestablishment of the Church of England in Wales; the Labor party has a whole host of measures, such as a Miners' Eight-Hours Bill, old-age pensions, a new housing act and a revolution in the English system of land tenure. At the same time a Liberal Government has to think of the Whigs, who invariably grow fidgety when the "rights of property" are attacked, and has also to think of the reception its measures are likely to meet with at the hands of the Lords.

A Government so harassed is bound to fall a peculiarly easy victim to the temptation which besets all Governments, of overloading its programme and of attempting more than it can possibly perform. Every session sees a vast "slaughter of the innocents"—the dropping, in other words, of most of the measures announced in the King's Speech. This session the slaughter has been somewhat heavier than usual. The Prime Minister early in June announced that, after the rejection of the Irish Council Bill by the Dublin Convention, the measure would not be proceeded with; that the Irish University Bill would have to be postponed to next year; that the Licensing Bill would also

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have to be dropped, but would hold the first place on the Government's programme next session; and, most important of all, that the Passive Resister's Bill would likewise be withdrawn and that its place would be taken in 1908 by a second comprehensive attempt to solve the Education question. There is to be no autumn session this year; but, on the other hand, the Prime Minister has given notice that the House will not rise for the holidays until the measures that have not been jettisoned and that still remain on the Government's programme have been carried. These include the two Bills for encouraging small holdings both in England and Scotland, the Army Bill, which has passed its third reading in the House of Commons and is now recognized as the most thoughtful and thorough scheme of army reorganization that has ever been presented to Parliament, two Land Valuation bills for England and Scotland, an Irish Evicted Tenants Bill, an English Working-class Housing Bill, a Court of Criminal Appeal Bill, a Patent Law Reform Bill and a Mines Eight-Hours Bill.

What, however, is particularly worth noticing about it is that it maps out the work not only of this session, but of the next, and that it includes a new Education Bill. The first Education Bill, I need hardly remind my readers, was thrown out by the Lords. The second Education Bill in its provisions and the principles that guide it will be like unto the first. If it meets with a similar fate, if the Lords again reject it, the Government will either have to make an immediate appeal to the country or suffer a tremendous loss of prestige. That is a possibility which makes it not unlikely that the autumn of next year may find us plunged into another General Election, with the House of Lords question and the school question joining hands to form the predominant issue. For the present, however, I merely wish to register the fact that no section of the Liberal party considers itself to have been treated quite fairly in the distribution of the Government's programme. Indeed, were it not for one supreme issue, on which all Liberals are substantially united, these jealous and discordant factions might easily between them make wreckage even of "the strongest Government of modern times."

That issue, of course, is the House of Lords. As I write, it is being vehemently debated in the House of Commons, and,

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having been raised, it must go forward to a finish. I think one may fairly take it for granted that the question of the House of Lords must now dominate not only the tactics and the strategy of the Liberal party, but the whole course of English politics for the next few years. It is a question with two distinct sides to it. One is the composition of the Upper Chamber itself. The other is its relations with the House of Commons. The latter part of the problem is the only one with which the Government is anxious to deal. It does not intend to put forward any proposals for making the Upper Chamber more democratic or more representative, or for interfering in any way with its internal composition. The object the Government has set before itself is to find a plan whereby the national wishes shall not be factiously thwarted. The fundamental trouble with the House of Lords, from this particular standpoint, is that it cannot be trusted to act fairly between the two parties. When a Conservative Government is in power the House of Lords passes automatically all the Bills that are sent up to it; it forgets altogether that it is supposed to be a revisory and suspensory branch of the legislature. But when a Liberal Government comes in the Lords scrutinize its measures with hostile minuteness; their prerogatives take on a sudden and expanding activity.

This is a condition of affairs which the Government has made up its mind to try to remedy. It had no option but to do so. The rejection of last year's Education Bill and of the Plural Voting Bill reduced not merely Liberalism as an effective governing agency to impotence, but the democratic principle to a farce. It is perfectly true that the House of Lords has been frequently in the past, and may be as frequently in the future, a truer exponent of the national will than the House of Commons. But more frequently it is the other way about, and the problem is therefore to devise a plan which, in the event of a disagreement between the two Houses, may allow public opinion time and opportunity to declare itself and may insure the predominance of the House of Commons without making it omnipotent. The Government believes it has found such a plan. The resolution which the Prime Minister moved on June 24th was in the following terms:

"That, in order to give effect to the will of the people as expressed by their elected representatives, it is necessary that the power of the

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other House to alter or reject Bills passed by this House should be so restricted by law as to secure that, within the limits of a single Parliament, the final decision of the Commons shall prevail."

That resolution was interpreted as a determination to abolish the House of Lords, but the speech in which the Prime Minister brought it forward, and in which he unfolded the plan which is afterwards to be submitted to the electorate, made it clear that the ultimate authority of the House of Commons is to be rendered effective only after full provision for argument, consultation and the informal but potent play of public opinion. To guard against any abuse of power by an exhausted and possibly discredited House of Commons, the Government proposes that the duration of Parliament should be reduced from seven years to five. This is a reform long desired by the Radicals, and must be considered an essential part of the whole scheme for checking the veto of the Lords. That scheme, of course, will only become operative in the case of a dispute between the two Houses. When such a dispute has broken out, the Government proposes that a private conference should take place between an equal number of members from both Houses. If the conference fails to effect an agreement, the Bill, or a similar Bill, is to be reintroduced after an interval of at least six months and passed through the House of Commons, with the discussion of it mapped out beforehand by time-table. The interval of six months would allow both time and opportunity for public opinion to declare itself decisively. After its second passage through the Commons, there would be another conference between the two Houses. If this again failed, the Bill would be passed as quickly as possible through all its stages in the Commons—probably within the limit of a single day—and sent up to the Lords with an intimation that this was their final chance. A third conference between the two Houses would take place on that basis. If it again proved futile the Bill would be submitted for the royal assent in the form of its final passage through the Commons and would become law. Such is the outline of the Government's plan. It is moderate and practical. It secures to the Lords a full participation in the discussion of a contested measure and ample opportunity for affecting its scope and provisions. At the same time, it makes the final predominance of the Commons a reality.

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ST. PETERSBURG, *June, 1907.*

THE second Russian Parliament, like the first, has abruptly disappeared, leaving nothing to its credit and much to its debit account. Everybody who had no axe to grind in the Tavrida Palace, and many honest men who had, admitted that the Duma was a dismal failure and its dissolution a pressing necessity.

With the reasons which militated against the continued existence of the Duma, the readers of the REVIEW are familiar. Summoned by the Tsar for the twofold purpose of giving a legislative form to the liberties which he had granted his people and of allaying the revolutionary fever that was coursing through the veins of the nation, the second Russian Parliament did neither. It was shy of work and averse to pacification.

In the Committee rooms, where most of the important business of a legislature is usually transacted, the bulk of the members sat about smoking and chatting. Many absented themselves altogether. The members of the Centre generally were the workers, the members of the Left were the drones, and the specimens of positive legislation which occasionally emerged into the light of day were not encouraging. A bill guaranteeing the right of public meeting was drafted by the Socialists and laid before the Duma. Scorning all legal niceties and scholastic distinctions, this project enacted that all Russians, without distinction of sex or age, should have the right to assemble and hold public meetings without let or hindrance. Persons in authority and private individuals guilty of limiting these rights, or of throwing obstacles in the way of their exercise, should be liable to imprisonment for a term not exceeding six months, if the acts of which they were convicted did not legally entail a more severe punishment. Consequently, a class of school-children abandoning their hoops and dolls and marbles and assembling in the Nevsky Prospect, in order to discuss an armed rising, could not be legally dispersed by the police. Among the persons whose names are affixed to this original bill is the ex-Vice-Governor of a province, M. Nalivkin, who is now a zealous convert to Socialism.

As those men were among the *élite* of the Duma, the *fruits secs* were the despair of self-respecting Russians. To squander their five dollars a day or to spend it on watches, the ticking of which soothed their ears, or on patent-leather boots, which fascinated their gaze, was a harmless pleasure. Less harmless was

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the abuse of parliamentary inviolability, to which all members of the Left were inclined. Inviolability positively turned their heads. The idea that they, who had been theretofore as slaves kneeling and striking the ground with their foreheads before every Jack-in-office, could not now be arrested even for a punishable offence, almost unhinged their reason.

A very curious case of the way in which inviolability was interpreted occurred on May 19th when the police visited the dwelling of Deputy Ozol, a Socialist leader, and found some seventy persons there and piles of compromising documents. Those are the documents which served later on as the basis of the indictment against the Socialist group, and led to the dissolution of the Duma. The object of the secret meeting at Ozol's rooms was, according to the State Attorney, to bring about a military revolt, and the deputies present were alleged to be in communication with the revolutionary "military league" which was seducing soldiers from allegiance. The deputies were not arrested; only the non-parliamentary members of the secret meeting. The authorities respected the inviolability of the former. But the next day Deputy Ozol and his friends protested vehemently against the criminal breach of inviolability involved in the raid on Ozol's rooms, for the dwelling of a deputy is sacred. It amounted, they affirmed, to a breach of stipulation, to an illegal act. Conservative speakers retorted that the conspiracy amounted to something more. But the incident is amusing as an example of how inviolability was construed, and not by one party, but by the majority of the Duma. If the second Duma was not characterized by a capacity for legislative work, neither can it be said to have contributed to the pacification of the country. On the contrary, it helped to fan the embers of disaffection into flame. For afterwards it abolished the exceptional laws against murder, it applauded political crime, it refused to condemn terrorism and a majority of its members shrank from expressing their satisfaction at the Emperor's escape from the hand of assassins. On June 3d the Government asked the Duma to prolong the operation of two temporary laws enacted by the Tsar when there was no Duma. One of these had for its object to punish the eulogy of crime. All who should praise murder, pillage, arson, were to be punished with especial rigor, because they are generally more guilty than the simple-minded individuals who carry out

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their teachings. The object of the second law was to enable the Government to rid the army of those recruits who are under police supervision and are usually the apostles of revolution among the troops. But the Duma negatived the demand of the Cabinet by a large majority. Yet M. Stolypin stuck to his guns. He would not hear of dissolution.

Symptoms of indignation were displayed in various parts of the Empire by various groups and classes of the population. They at first appealed to the Premier and then addressed their requests directly to the Tsar. The Emperor was consequently overwhelmed with telegrams, thousands of which came in the form of congratulations on his escape from the hands of assassins, and in the form of petitions that he would dismiss the Duma of which a majority had refused to express joy at his safety or its disapproval of political murder generally. At last these evidences of loyalty took effect and the monarch spoke to his people, at first in a minor key and then in the tones of a real ruler which he was supposed to have forgotten. In his reply to the Council of the Empire, which had displayed an unexpected degree of enthusiasm in its congratulations, the Tsar wrote: "My life is not dear to me, if only Russia live on in glory, peace and well-being." A man in danger, the leader of a little band of soldiers in a hostile country, might utter such words as these. But the head of a nation, at home? They are characteristic of the times.

But the Emperor confined himself to words, while his Premier continued to act, and between the two there was a lack of harmony. In M. Stolypin's plans, allowance had been made for a longer life of the Duma. His ambition, which he cherishes for his country's sake, would seem to consist in having his name linked with the constitutional movement, which has time among its allies. Time is undoubtedly on the side of constitutionalism, federalism, parliamentarism, democracy. Time; but not the present time. And to M. Stolypin the needs of the moment are frequently unknown, unknowable. Shut out from contact with the nation as it lives and works, he is dependent upon the crumbs of information that fall from the green tables of his bureaucrats. A hard-working, conscientious man who lives for his country and his monarch, he cannot achieve the impossible, however noble his aims. How can he become acquainted with the life and needs of the people when he spends his nights at the green table pre-

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siding at councils, offering explanations and answering objections? In the daytime he has to listen to reports on this question and on that, concerning riots, mutinies, newspapers, elections, police measures—everything. And all the livelong day he deals only in words.

Even if the Minister-President had adopted efficacious measures to restore order, which, after all, is the first duty of every Government, the feat would be little less than miraculous. But he failed utterly. One of the obstacles to success was the very Duma which ought to have been an auxiliary. The deputies promised land for nothing and the peasants tried to take it. Pillage, riots and the wanton burning of property were among the results. Juries are afraid to bring in verdicts of guilty, even in cases where the evidence is overwhelming. Nowhere is one sure of one's life. Universities, schools, hospitals, homes for children, churchyards, are arsenals where bombs, dynamite, rifles, ammunition, are stored. Even churches afford no sanctuary to peaceful people. Assassins do their fell work there. Numbers of outrages are reported from orthodox places of worship during divine service.

In a word, terrorism was rampant in Russia. The plot against the life of the Tsar, which was among the most thorough schemes of the kind ever matured, marked the turning-point. Even Liberals of a moderate type called loudly for a firm Government after this. And, when a majority of the Duma refused to express satisfaction that the nefarious plot had been foiled, it became obvious to most people that such a Parliament could never work hand in hand with the Ministers of the monarch. If the deputies' persons are to be hedged round with inviolability, people said, is not the person of the monarch to be safeguarded from bombs and revolvers?

Unless we allow for the influence, not of a court camarilla, but of the Tsar himself, acting this time cautiously and resolutely on behalf of the nation, an influence which undoubtedly gave a bias to the course of recent events, we shall miss the force of the far resonant result and its significance for the future. The monarch's comments were first addressed to individuals. The President of the Duma, for instance, who was received in audience by the Tsar, passed an uncomfortable half-hour. Among other things, the Emperor catechized him respecting his severe treatment of

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members of the Right. An explanation was forthcoming at once. It was strengthened by the assurance: "I regard with equal dislike the extreme Right and the extreme Left"—a specious saying, but hardly a fair principle. It is as though a policeman coming upon a highwayman and his victim should exclaim: "I am a representative of the authorities and have as little sympathy for one of you as for the other." The Tsar's comment was: "Hm, that is a question of —— taste." In the course of a conversation which he had with certain Conservative members of the Duma on the same day, the mild-mannered monarch uttered a "*Tu quoque, fili mi!*" when speaking of those members of the Duma who had passed into the Opposition camp from the council-room of the Tsar. The words the Emperor is said to have used are these: "As for socialists like Alexinsky and Tseretelli, I say nothing. They know no better. But I cannot forgive my Generals, who lack this excuse." But the most significant conversation of all passed between the Tsar and one of the ultra-Conservative deputies who had been expelled from fifteen sittings of the Duma. "If I am not mistaken you have been expelled from the Duma," his Majesty remarked, interrogatively. "I had that honor, Sire," the deputy replied. The Emperor looked puzzled and after a pause said: "I don't quite understand your meaning." "I mean, Your Majesty, that I was put out for having defended with some warmth the principle of monarchical government. As I acted according to my convictions, I am resolved to continue to defend the same principle in future." "I thank you," was the significant reply.

These narratives were repeated and commented upon. People construed them as an indication that the Emperor would soon resume his rôle of ruler. What Stolypin would then do was not quite clear, but it was assumed that he would resign his post. That was the origin of the rumors of his impending resignation, for which there was just then no tangible ground.

M. Stolypin's letter to the President of the Duma asking for the surrender of eight members on charges, the nature of which had been communicated long before, was the beginning of the end. The demand had been made in March, and had elicited no reply down to June 14th. Two days later the Premier notified the Speaker of his intention to make an important communication at a secret sitting from which the public must be excluded.

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That sounded ominous. But even then the deputies did not lose heart. At the historic sitting the Premier announced that treasonable charges based upon trustworthy and copious evidence were made against fifty-five Socialist members of the Duma. As their surrender to the law authorities without delay was a State necessity, would the Duma take the necessary measures? The Duma declined to debate the request, but discussed the question whether it should be handed over to a committee and answered it in the affirmative. Whether the Cabinet would assent to the delay involved appeared doubtful at first, but as the Duma wisely ordered that the Committee should report within twenty-four hours, all misgivings were quieted. Accordingly, on Saturday the Committee met and deliberated, but was unable to come to a decision. The Chairman reported that further documents and explanations were desirable. The Minister of Justice at once despatched an official with documents and instruments to furnish detailed answers to all questions. The official, Kamyshensky, won the hearts of the Committeemen, whose apprehensions vanished. So completely did they vanish that the Committee resolved to take no decision, to hold no plenary sitting that day, but to adjourn until Monday. And the solemn promise to report definitely that evening, and to grant or refuse the surrender of the deputies? That once broken, would a second promise be credited? Apparently it would. For the official sent by the Minister of Justice agreed to return on Monday to the Committee-room and answer further questions. On Monday? Then the Government assented or would assent to the postponement until Monday? Surely; otherwise, how could its representative agree to return on that day? And the members of the Committee went home. Between eleven and twelve at night four of them—all "Cadets"—called on the Prime Minister to ask how he would regard a decision which would surrender a certain number of deputies and refuse the remainder. But it was too late.

For, meanwhile, events which the future historian may be left to narrate had taken place at some distance, and the decision was no longer in M. Stolypin's hands. The Imperial Manifesto which the Premier did not write, and the electoral law which he and the Deputy Minister, Kryshanoffsky, had helped to draft, were being signed and sealed. On Sunday morning they were duly published and the Duma ceased to exist.

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THE EDITOR'S DIARY.

THURSDAY, *July 11.* **Of Second Wives and Husbands.**

THAT a second wife fares better than one first wedded has become an axiom, the truth of which has been, and no doubt will continue to be, amply confirmed by observation. We wonder why. The effect of gradual change from novel to commonplace relationship is understandable; so also is the result of a widening of mental, moral and physical interest on the one side accompanied by a narrowing on the other, but these are features of existence wholly incidental to and in accord with the immutable laws of nature. How often it happens in these days of women's exchange that, to the most kindly observer or even friend, the first seems vastly superior in all respects to the second companion, despite the abrupt change of attitude on the part of him most concerned from indifference or cruelty towards the former to patient devotion to her presumably fortunate successor!

The greed of man in the possession of woman has been manifest from the beginning. Adam undoubtedly would have taken more wives could he have spared more ribs; and, despite his subsequent exemplary life, barring an excusable tendency after service so strenuous to linger too long with the wine, it is quite improbable that Noah lived as a recluse during those five hundred long years before he begat our ancestral Shem, Ham and Japheth. Even the canny Jacob, after being tricked by the no less crafty Laban, doubtless in meet return for swindling his guileless brother, was unwilling to part with Leah, and put his hands to the plough for seven more long years to get Rachel. Apparently there was little difference in attractiveness between the two sisters. The "tender eyes" of the elder surely must have counterbalanced the beauty of the younger; moreover, Leah gladdened

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her husband's heart with many lusty children long before Rachel placed in his arms the little Joseph, who subsequently engaged in predatory activities that in these good days would clearly fall within the provisions of the Interstate Commerce act and subject their doer to stern rebuke for possessing a swollen fortune. Nevertheless, when later Jacob lifted up his eyes, in conformity with his characteristic caution, and beheld the red-headed Esau approaching with four hundred stalwart retainers, he promptly stationed the patient Leah and her children on the firing-line and secluded Rachel and the future young corn monopolist in a protected tent in the rear. We readily perceive, therefore, as previously noted, that from the very beginning and for no apparent reason the second wife was unduly preferred, and so the custom has maintained even to these regenerate days.

Further analysis of the causes of this continuing discrimination might prove interesting, but could hardly serve any useful purpose; so we may as well place the burden upon the authority of Biblical tradition and cease to bear too heavily upon the modern usage, which virtually forbids one to divorce more than one partner without encountering forbidding glances from scrupulous high society of the present day. Since the Puritanic dictum that, having made one's bed, one must lie in it, has proven too restricted for twentieth-century requirements, it is a comfort to reflect that observance of obligations to a second spouse must be maintained to avert the ban of social ostracism.

But what happens to the second husband? To him no truism has been applied and we have never heard his case discussed. Is he, too, regarded more kindly than his predecessor, or is his position as insignificant as that of a bridegroom on a wedding day? Upon this point no data seem to exist, nor have we been able by the most diligent inquiry to extract any trustworthy information from those best qualified to testify. We can only hope that the mere statement of the query may bring forth evidence of fact similar in quantity and quality to that which has afforded us so much enlightenment respecting the true spheres of living American spinsters.

FRIDAY, *July 12.* Of Family Tendencies.

IN the modern haste to rise in the world, and to obliterate one's footsteps, people are apt to overlook the strength that is gained

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by standing still; the firmness and sturdiness of growth and the slow but sure development of force and influence. We are inclined to think too much nowadays of the name of the work we do, rather than the way the work is done and the results it begets. If we could but return to the simplicity of Herbert's:

"All may of thee partake:
Nothing can be so mean
Which with his tincture for thy sake
Will not grow bright and clean—

"A servant with this clause
Makes drudgery divine;
Who sweeps a room as for thy laws
Makes that and th' action fine."

There is no joy in life greater than congenial work, and that work is like to be most congenial and most fitting which is the work our fathers did before us. If only we could, by any earthly means, get back to the feeling that no work is in itself more noble than another, and that the whole question of fineness and prestige depends upon the way one's work is done, what a paradise the world would grow to be. Fancy a world where each man is doing the thing he can do best and doing it because he loves it. There is no royal road to such a paradise, but it would seem natural that the most fitting profession for a man should be that of his fathers before him. Who cannot remember the splendid body of English domestic servants, now so rapidly passing away, who handed down their situations from generation to generation and were as deeply implicated in the fortunes of a great family as its own members? It is told of Johann Sebastian Bach that when he was training his great choir in Leipzig and writing the wonderful organ fugues, there were seventeen Bachs, all organists and choirmasters in small German towns. A very successful modern writer tells of his family that of "my great-grandfather's descendants sixteen have published books," and "of my father's children all five have published books."

One remembers the Rossetti family, Maria Francesca, writing her beautiful volume on Dante; Dante Gabriel, following, gifted as few men have ever been as seer, painter, poet; William Michael an industrious writer and critic, and Christina the first of English women poets.

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The strength of numbers, of continuing a vocation instead of finding a new one, the avoiding all the difficulties of a fresh initiation, all these tend to lift one at the start when one pursues the family calling. For try as we will, in a democratic country, to believe that a man stands on his own feet only, the truth is that a man is a great deal more than himself; he is his ancestors, with their leanings, their tendencies, their failings, their gains; he is his brothers and his sisters and his cousins, with their successes and their position in life and their reputations, and when he differs from them it is only a casual break in the thread of continuity, a little sporadic side issue. In the main, a man is a part of his own tribe and clan, and can infinitely better follow the same pursuits and accomplish like designs than divorce himself from his past and begin to blaze a new trail.

And how instinctively, in old age, we all turn back to the family and read the records and gather up the traditions, and smile indulgently over the failings, because the same tendencies have warred in our own members. It is when a man remembers the family that he realizes, after all, how little he is a unit in this great universe.

SATURDAY, *July 13.* The Object of Women's Clubs.

THE Woman's Club is here not only to stay but to multiply, and the great question is what its object should be, and then in how far it attains that object. If one ask what it was that marred the life and influence of the old-fashioned much-domesticated woman, we find that the conditions of her life tended to confining her sympathies and interests; to making her useful to a small community rather than to humanity at large. It would be dull, indeed, to overlook the fact, that by just such confining, noble natures were often deepened, and that if they were of value to few people they were, at any rate, of infinite value to those few.

But propaganda, and popular movements and organizations are not for the nobler natures. Noble natures are self-poised and help themselves. No club was needed to help George Eliot write novels, or Rosa Bonheur to paint, or Duse to act, or Florence Nightingale to nurse. Clubs are for the masses who cannot escape deleterious influences except by organized effort. So, if one be called upon to state succinctly the object of women's clubs, one might

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say their highest function is to introduce to women the idea of comradeship and cooperation, and to release them from merely personal interests. Women have served men and children, but few women have understood how to serve their kind bravely. They have shown passionate loyalty in the family; but only here and there, in special cases, have they shown loyalty to womanhood. If the congregating of women should ultimately lead to the realization that the welfare of each woman is insolubly bound up with the welfare of all women, what a wide realm of reform we might see! If the comradeship of women should show them that some form of economic independence is necessary to the dignity of each human being, what a world of falseness and favor-currying might be done away with!

Doubtless the humiliating and shocking incident of two little boys who jested and laughed at their mother for buying their father an easy-chair and charging it to him, could only be duplicated in an old-fashioned community, and yet the idea that their mother had a right to any income, or to any expenditure of her own, despite the fact that she had married a poor man and by prudence and industry helped him to become a rich man and had borne his nine children, occurred to them as dangerously new and advanced. They were good sons and loving, but their mother was, after all, only the father's slave, and she had no right, out of his income of some twenty thousand a year, to buy an easy-chair. Perhaps the fact, too, that three little boys who heard their mother say, in response to this tale, "Thank Goodness, I can buy a chair when I want, for I make as much as my husband," all blushed and said shamefacedly, "At least, I'd never mention it," may go to show that the economic position of woman needs some readjustment. So long as woman's independence is gained only by underhand means, by favor or admiration, so long will she remain only a part of a man's goods and chattels and in a position which invites dishonor.

It is another question to ask in how far women's clubs are going to improve the life of women. Their clubs are multiple and exist for multiple purposes. There are social clubs that exist for no better object than to cultivate exclusiveness, for the ignoble object of showing that one woman may flaunt something from which she can debar another. There are clubs which exist to offer women a chance at the more common self-indulgences of

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men. There are clubs to encourage women to speak easily in public, to lose whatever timidity and reserve the centuries of domesticity have inculcated. All these purposes, barring the first, which is simply primitive and vulgar, may be shaped to useful ends if only they lead women to respect and uphold true womanhood. There are many civic duties which women by virtue of their training can attend to better than men. There seems no doubt that, in all matters pertaining to the welfare of the children in the State, the influence of woman would be more scrupulous and disinterested than that of man. There is no doubt that the civic cleanliness, convenience and order would be more wisely administered by women. But, chiefly, let us hope that the women's clubs, by bringing women more constantly in contact with each other, may teach them loyalty to each other and induce the feeling of the responsibility of all women for the fate of each woman.

MONDAY, *July 15.* On Making Wills.

THE writing of a will is a serious and a formal matter, and into one a man puts his deliberate and well-reflected intentions. This makes a will stupendously revealing, and to read one over is to come very close to the spirit of the man who wrote: to know his treasures, to understand his feeling toward men and to measure his fitness for adventures among seraphic and angelic beings. The words a man desires to have read when he lies dumb, the gifts he leaves, the grace with which he gives, all these lay bare the spirit, the heart of a disposition as few other things can. For a will is that which is to live after one, and it is written knowing that no wound inflicted can ever be remedied, no neglect repaired.

"Why," said a little child on first hearing of a search for a will—"why, don't they know that he has carried his will up to God?" And yet the final expression of it remains in concrete terms for men to see. How egotism, or miserliness, or conceit, or self-satisfaction can shine out of a will! How little exalting it is in most cases to read wills, and how often they turn us back to the authoritative statement that it is easier for a camel to pass through the eye of a needle!

The most perfect will we have ever seen was that of one who

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had so noble a sense of proportionate values and so keen and perfected a set of perceptions that, reading it, we can readily fancy how easily the bridge was passed from human life to the councils of the angels:

"I, Charles Lounsbury, being of sound mind and disposing memory, do hereby make and publish this, my last will and testament, in order as justly as may be, to distribute my interest in the world among succeeding men.

"That part of my interest which is known in law and recognized in the sheep-bound volumes as my property, being inconsiderable and of no account, I make no disposal of in this my will.

"My right to live, being but a life-estate, is not at my disposal, but these things excepted all else in the world I now proceed to devise and bequeath:

"*Item:* I give to good fathers and mothers, in trust for their children, all good little words of praise, and encouragement, and all quaint pet names and endearments, and I charge said parents to use them justly and generously, as the needs of their children may require.

"*Item:* I leave to children, inclusively, but only for the term of their childhood, all and every, the flowers of the fields, and the blossoms of the woods, with the right to play among them freely, according to the customs of children, warning them at the same time against thistles and thorns. And I devise to children, the banks of the brooks, and the golden sands beneath the waters thereof and the odors of the willows that dip therein, and the white clouds that float high over the giant trees. And I leave the children the long, long days to be merry in, in a thousand ways, and the night and the moon and the train of the Milky Way to wonder at, but subject, nevertheless, to the rights hereinafter given to lovers.

"*Item:* I devise to boys, jointly, all the useful idle fields and commons where ball may be played; all pleasant waters where one may swim; all snow-clad hills where one may coast, and all streams and ponds where one may fish, or where, when grim winter comes, one may skate; to have and to hold the same for the period of their boyhood. And all meadows with the clover blossoms and butterflies thereof; the woods and their appurtenances; the squirrels and birds, and echoes and strange noises, and all distant places which may be visited, together with the adventures there found. And I give to said boys each his own place at the fireside at night, with all pictures that may be seen in the burning wood, to enjoy without let or hindrance and without any incumbrance of care.

"*Item:* To lovers, I devise their imaginary world with whatever they may need: as the stars of the sky; the red roses by the wall; the bloom of the hawthorn; the sweet strains of music and aught else they may desire to figure to each other; the lastingness and beauty of their love.

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"*Item:* To young men, jointly, I devise and bequeath all boisterous, inspiring sports of rivalry, and I give to them the disdain of weakness and undaunted confidence in their own strength. Though they are rude, I give to them the power to make lasting friendships, and of possessing companions, and to them exclusively I give all merry songs and brave choruses, to sing with lusty voices.

"*Item:* And to those who are no longer children or youths or lovers, I leave memory, and I bequeath to them the volumes of the poems of Burns and Shakespeare and of other poets, if there be others, to the end that they may live over the old days again, freely and fully, without tithe or diminution.

"*Item:* To our loved ones with snowy crowns I bequeath the happiness of old age, the love and gratitude of their children until they fall asleep."

It is strange and ironical comment upon human institutions that this will should have come from an insane asylum.

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